

AUG 8 1983

ALEXANDER L. STEVENS,  
CLERK

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1982

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ESCAMBIA COUNTY, FLORIDA, *et al.*,  
*Appellants,*

v.

HENRY T. McMILLAN, *et al.*,  
*Appellees.*

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ON APPEAL FROM THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

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**JOINT APPENDIX**  
**VOL. V — Pages 1155-1304**

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**Appeal Docketed February 2, 1983**  
**Probable Jurisdiction Noted April 18, 1983**

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**Proposal of Charter Commission Appointed in 1975**

**CHARTER GOVERNMENT  
STUDY COMMITTEE  
REPORT**

**AMERICAN REVOLUTION BICENTENNIAL  
1776-1976**

**ESCAMBIA COUNTY, FLORIDA**

**1975-1976**

ESCAMBIA COUNTY  
PROPOSED CHARTER  
BY  
CHARTER GOVERNMENT STUDY COMMITTEE  
FOR  
BOARD OF COUNTY COMMISSIONERS

---

*MEMBERS*

*B. G. Tennant, Chairman*

*Adrian Blanton*

*Ms. Jacquelyne Simmons*

*Ashton Brosnahan, Jr.*

*Frank Westmark*

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MAJORITY REPORT BY:

B. G. Tennant, Chairman

Frank Westmark

Ms. Jacquelynne Simmons

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Escambia County, Florida

1975-76

# 1976 Escambia County EEO-4 Summary Salary Analysis

	Financial Administration		Streets & Highways		Police Protection		Natural Resources		Housing		Community Development		Corrections		Utilities & Transportation		Sanitation & Sewage		Nursing Home		Emergency Services		Total		% Black
	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	W	B	
Officials Admin.	5	2	-	-	-	-	1	0	-	-	1	0	1	0	-	-	1	0	-	-	1	0	10	2	
Professional	37	10	1	0	2	0	-	-	2	0	3	0	3	0	-	-	0	1	1	0	-	-	49	11	
Technicians	62	3	8	0	41	0	-	-	-	-	2	0	1	1	2	0	6	0	9	9	10	0	141	13	
Protective Service	2	0	1	0	139	6	-	-	-	-	-	-	25	0	-	-	-	-	-	-	-	-	167	6	
Para-Professionals	-	-	-	-	1	0	-	-	-	-	-	1	-	-	-	-	-	-	11	39	24	0	36	40	
Office Clerical	189	5	2	0	32	1	1	0	1	0	2	0	1	0	1	0	-	-	3	0	1	0	233	6	
Skilled Craft	26	3	36	0	2	0	-	-	-	-	-	-	-	-	-	-	10	5	-	-	-	-	74	8	
Service Maintenance	14	29	43	10	1	4	2	2	-	-	-	-	0	1	-	-	3	2	1	34	-	-	64	82	
Total	335	52	91	10	218	11	4	2	3	0	8	1	31	2	3	0	20	8	25	82	36	0	774	168	

## FOREWORD

Anyone who has tried to sell a complex product such as governmental structure knows the difficulties involved in getting the message to the people. Without knowledge, the public is apt to accept only what they know — "status quo." As our changing society requires counties to provide new and improved services and perform new functions, they must have more flexibility of operation and financing.

It is a fundamental principle that home rule, or the right of local self-determination is a corner stone of our American democracy. Counties must have the freedom to act, to participate, and to be responsible in matters of purely local interest.

Reorganization of County government should not be undertaken lightly, but with full recognition of the need for change. To the people heavily involved in government, the need is so obvious that they never establish a case for change. The average citizen feels no impelling need, no urgency for any major restructure of the governmental pattern. Perhaps the most basic reason is the lack of awareness of the need for change and the lack of knowledge of the present structure.

Few citizens are aware of the County's ties to state and federal government and the limitations of County powers. These ties have a direct relationship to the cost of local government and the inability of County government to respond to local problems. Restrictions on County government have accumulated to the point of stifling local initiative in the very areas most susceptible to local interest and control, and priorities are often neglected because federal programs overshadow locally defined needs. Dur-

ing the past ten years. expectations of citizens have been raised that every economic and social problem would be solved with funds provided by some new federal program, and federal programs continue to fund private agencies within the County. This does not mean, however, that the County should not obtain the maximum federal funds available in providing necessary or desirable needs and objectives of the County.

We must find some way to revitalize local government and roll back increasing concentration of power of the state and federal governments. We must also find some method to allow County government more flexibility of form, function, and finance; therefore, modernizing County government is perhaps the most pressing need for action. County governmental machinery of the Twenties and Thirties is simply not capable of meeting the demands of the Seventies and Eighties.

B. G. Tennant, R.S., Chairman  
Charter Government Study Committee

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PROPOSED  
ESCAMBIA COUNTY CHARTER

PREAMBLE

*We, the people of Escambia County, Florida, join together, under God, in the belief that County government shall be responsive to the people of the County and shall serve the people in a manner of efficiency and accountability, with equal benefits for all citizens; do in accordance with the Constitution and Laws of the State of Florida, ordain and establish as our Charter and form of government this Charter of Escambia County, Florida.*

ARTICLE I

POWERS OF GOVERNMENT

SECTION 101. BODY CORPORATE AND  
POLITIC.

Escambia County shall be a Body Corporate and Politic, and as such shall have all rights and powers of local self-government, which are now, or hereinafter may be, provided by the Constitution and Laws of Florida, and this Charter.

SECTION 102. NAME AND BOUNDARIES.

The Corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings touching, its rights, powers, properties, and duties. Its seat shall be within Pensacola, Florida, and boundaries of the County shall be those presently designated by law.

### SECTION 103. GENERAL POWERS OF THE COUNTY

The County, under this Charter, shall have all powers and duties described by the Constitution, Laws of Florida, and this Charter, and shall have all powers of local self-government, provided however, the County shall have no power to promulgate, adopt or enforce any rule, regulation, resolution or ordinance or to assume or exercise jurisdiction with respect to any matter or thing with respect to which, the state of federal government or any department, division, commission or authority thereof is or may be authorized or empowered to exercise jurisdiction.

### SECTION 104. SPECIAL POWERS.

The County shall have all special powers and duties which are not inconsistent with this Charter, heretofore granted by law to the Board of County Commissioners, except as limited by Section 103. The County shall have the power to provide County or municipal purposes, except as otherwise provided by the Constitution or general law of Florida.

### SECTION 105. TRANSFER OF POWERS.

The County shall have the authority to assume and perform all functions and obligations now or hereinafter performed by any municipality, special district or agency whenever such municipality, special district or agency shall request the performance of transfer of the functions to the County.

### SECTION 106. DIVISION OF POWERS.

This Charter hereby establishes separation between the legislative, administrative, and judicial functions of this

government; the establishment and adoption of policy shall be the responsibility of the Legislative Branch and the execution of that policy shall be the responsibility of the Administrative Branch.

#### SECTION 107. EXERCISE OF POWERS.

All powers of the County shall be executed as provided by this Charter or, if the Charter makes no provisions, as provided by ordinance or resolution of the Board of County Commission.

#### SECTION 108. SECURITY OF THE CITIZENS' RIGHTS.

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to prevent by ordinance or by civil or criminal action, whenever appropriate, in securing for all citizens:

A. Just and Equitable Taxation: The County shall prevent the imposition of any tax within the County in excess of the limitation imposed by Article VII, Section 9, of the Florida Constitution, or by the Laws of Florida;

B. Proper Use of Public Property: The County shall prevent the use of public property, taxes, or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by Article VII, Section 10, of the Florida Constitution, or by the Laws of Florida;

C. Full Disclosure of Public Records and Proceedings: All meetings and proceedings established by the County shall be open to the public in compliance with the Laws of Florida. All official acts, documents, and financial reports, except those which have been specifically

prepared for use in court proceedings, criminal and law enforcement files, those which would invade a person's right of privacy, shall be open for public inspection, and the agency having custody and control of public records shall, upon request supply certified copies of the records requested for a reasonable fee as established by ordinance;

D. Protection of Human Rights: The County shall establish provisions, pursuant to state and federal law, for protection of citizen human rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin by providing and insuring equal rights and opportunities for all citizens of Escambia County.

#### SECTION 109. ORDINANCE SUPERIORITY.

Where a municipal ordinance conflicts with a County Ordinance, the municipal ordinance shall prevail to the extent of such conflict, otherwise, County ordinance shall be effective countywide including within municipality.

#### SECTION 110. CONSTRUCTION.

The powers granted by this Charter shall be construed liberally in favor of the County government. The specified powers in this Charter shall not be construed as limiting, in any way, the general or specific power of the County, as stated in this Charter and the Constitution and Laws of the State of Florida.

#### SECTION 111. SEVERABILITY.

If any article, section, subsection, sentence, clause or provision of this Charter or the application thereof shall be held invalid for any reason, the remainder of the Charter and of any ordinances, regulations or resolutions made thereunder shall remain in full force and effect.

## ARTICLE II

## LEGISLATIVE BRANCH: COUNTY COMMISSION

## SECTION 201. COMPOSITION.

The legislative power of the County shall be vested in the Escambia County Board of County Commission, hereinafter referred to as the "Commission." As of the effective date of this Charter, the Commission shall be composed of seven (7) members. There shall be five (5) Commission districts and one (1) Commission member shall be elected from each district by voters of that district. There shall be two (2) Commission members elected at large by voters of the entire County. The Commission members elected at large shall represent the County at large.

## SECTION 202. TERMS OF OFFICE.

All County Commissioners shall be elected on a partisan basis for staggered terms of four (4) years, except as provided for in this section. The Commission members elected from a district shall be elected for a term of four (4) years, and be limited to two (3) consecutive terms as a district Commissioner. Upon adoption of this Charter, the two (2) additional at-large seats created by this Charter shall be filled at the next general election by electing one (1) Commissioner for two (2) years and one (1) Commissioner for four (4) years, and each term shall be four (4) years thereafter. Commission members elected at large shall be limited to two (2) consecutive terms.

## SECTION 203. CONTINUANCE OF COMMISSIONERS.

The Commission members in office on the effective date of this Charter shall continue in office until the normal expiration of their term or until the election of their successors.

#### SECTION 204. APPORTIONMENT.

The Commission shall divide the County into five (5) districts of contiguous territory as nearly equal in population as practicable after each decennial census. If the Commission is unable to complete the reapportionment of the Commission districts within six (6) months after the official publication of the census, the Director of Law, upon authorization of the Commission or upon petition of twenty-five (25) electors of the County, shall petition the Circuit Court having jurisdiction in the County to make such reapportionment.

#### SECTION 205. COMPENSATION.

Commission members' salaries shall be as established by general law. Commission members shall not be reimbursed for expenses other than those specifically approved by the Commission. Members of the Commission shall receive reimbursement for their actual and necessary expenses incurred in the performance of their official duties as provided by general law.

#### SECTION 206. QUALIFICATION.

Members of the Commission shall be qualified electors of the County and shall have been a resident of the County for one (1) year immediately preceding the date on which they qualify to run for office. Members elected from districts shall have resided within the district from which they are elected for at least six (6) months prior to the date on which they qualify to run for office. Any Commission member who changes residency from the County, and any Commission member elected by district who changes residency from the district from which the member was elected, shall be deemed to have vacated his office.

If a member ceases to be a qualified elector of the County or is convicted of a crime involving moral turpitude, he shall immediately forfeit his office. The Commission shall be judge of the qualifications of its members, and with that purpose, shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the Commission in the exercise of powers granted by this section shall be subject to review by the courts.

#### SECTION 207. VACANCIES.

A vacancy in any Commission member's office or other elected County official under this Charter government shall be filled in accordance with the Constitution and Laws of Florida.

#### SECTION 208. SUSPENSIONS.

Suspensions from office of any elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

#### SECTION 209. POWERS AND DUTIES OF OF THE COMMISSION.

The Commission shall have all jurisdiction and powers granted to it by the Constitution, Laws of Florida, and this Charter. The Commission, in addition to other powers and duties provided in this Charter, shall have the specific powers and duty to:

- (1) Confirm appointment by a majority vote of the full Commission and to remove by a majority vote of the full Commission the Executive Director; department heads of the County; members of appointed County Boards, commissions, and advisory groups, except as otherwise provided for in this Charter.



(2) Elect from among its members a Chairperson and a Chairperson Pro Tem. The Chairperson shall preside at Commission meetings. If at any meeting the Chairperson is not present or is unable to act, the Chairperson Pro Tem shall preside. The Chairperson and the Chairperson Pro Tem shall be elected annually prior to December 1, and shall take office on the first Thursday of January of each year.

(3) Adopt a seal for the County.

(4) Adopt, amend, and repeal ordinances and resolutions

(5) Adopt and amend the Administrative Code.

(6) Provide for an independent audit of County finances.

(7) Fix and amend Commission districts so as to be nearly equal in population as practicable.

(8) Levy taxes and special assessments and to borrow money subject to the limitations as provided by the Constitution and Laws of Florida.

(9) Review budgetary requests, and make the final determination of appropriations for all operations of County government, except as provided by law.

(10) Enter into bilateral and multilateral contracts with adjoining Counties and with governmental units within or contiguous to the boundaries of the County for joint performance, or for performance by one governmental unit in behalf of the other or others of any function or activities which the County is authorized to perform.

(11) Make investigations of the affairs of the County and to make inquiries into the conduct of any County employee, department, office, or agency.

(12) Make appropriations for County purposes.

(13) Adopt rules and procedures as shall be necessary for the orderly transactions of the business of the Commission.

(14) Designate which officers and employees shall be bonded and fix the amount in form of such bonds.

(15) Require periodic and special reports concerning functions of any County department, office, or agency receiving County funds. Such reports, in the case of departments, offices, or agencies, subject to the direction and supervision of the County Executive Director, shall be submitted through the County Executive Director.

#### SECTION 210. POWERS AND DUTIES OF THE CHAIRPERSON OF THE COMMISSION.

The Chairperson shall serve as the chief officer of the legislative branch of County government and shall devote such time as is necessary to perform the duties of the office. The Chairperson, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(1) Serve as the legislative leader and presiding officer of the Commission.

(2) Appoint the Executive Director, subject to confirmation by a majority vote of all members of the Commission.

(3) Present annually in January of each year a "State of the County" message, setting forth programs and recommendations to the Commission.

(4) Nominate, subject to the confirmation by a majority vote of all members of the Commission, members of all appointed County boards, commissions, and advisory groups.

(5) Call all regular and special meetings of the Commission.

(6) Promote the welfare and best interest of the citizens of Escambia County by presenting from time to time policy recommendations to the Commission.

(7) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

#### SECTION 211. PROCEDURE: MEETINGS; RULES AND JOURNAL; VOTING.

A. The Commission shall meet regularly, at least twice in every month, at such times, and places as the Commission may prescribe by rule. Special meetings may be held on the call of the Chairperson or of two (2) or more members and, whenever practicable, upon no less than twelve (12) hours effective notice to each member. All meetings of the Commission shall be public.

B. The Commission shall determine its own rules and order of business and shall provide for keeping a journal of its proceedings. This journal shall be a public record.

C. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. A majority of the members of the Commission

shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Commission.

#### SECTION 212. COUNTY ORDINANCES AND RESOLUTIONS.

Every County ordinance and resolution shall be introduced and approved in accordance with the Constitution and Laws of Florida.

#### SECTION 213. RECORDING, PRINTING, AND CODIFICATION.

The Commission shall provide for the authentication and recording in full, in a properly indexed book kept for the purpose, of all minutes of meetings, ordinances and resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission, with the advice and assistance of the Director of Law, shall cause each ordinance and resolution having the force and effect of law and each amendment to this Charter to be printed as promptly as possible following its adoption; and the printed ordinance, resolutions and Charter amendments shall be sold to the public at reasonable prices to be fixed by the Commission. The Commission shall further maintain a codification of all ordinances. Such codification shall be published and made available for distribution on a continuing basis at a reasonable price fixed by the Commission.

#### SECTION 214. RESTRICTIONS ON ELECTED OFFICIALS AND COMMISSION.

Neither the Commission nor any of its members, except the Chairperson, shall in any manner dictate the appoint-

ment or removal of any County employee. Except for the purpose of inquiries under Section 209 of this Article, the Commission or members, in dealing with County employees who are subject to the direction and supervision of the Executive Director, shall deal solely through the Executive Director, and neither the Commission nor its members shall give orders to any such employee, either publicly or privately, any willful violation of the provisions of this subsection by a member of the Commission shall be sufficient grounds for an action for his removal from office, brought in a court of competent jurisdiction. No person elected or member of the Commission shall be appointed to any paid County administrative office of the County or paid county position during the period beginning on the date of his election and ending not less than one (1) year after the expiration of term for which he was elected.

### ARTICLE III

#### ADMINISTRATIVE BRANCH: COUNTY EXECUTIVE DIRECTOR

##### SECTION 301. COUNTY EXECUTIVE DIRECTOR.

There shall be a County Executive Director, hereinafter referred to as the "Executive Director," who shall be appointed by the Chairperson of the Commission, subject to confirmation by a majority vote of all members of the Commission, for an indefinite term. The Executive Director shall serve at the pleasure of the Commission, and he may be removed at any time by a majority vote of all of its members. At least thirty (30) days before such removal is to become effective, the Commission shall furnish the Ex-

ecutive Director with a written statement setting forth its intention to remove him. In the event such a removal for any reason other than a conviction of a felony or malfeasance in office, he shall be granted two (2) months' termination pay.

#### SECTION 302. QUALIFICATIONS.

The Executive Director shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office, as herein outlined. The Executive Director need not be a resident of Escambia County or of the State of Florida at the time of his appointment, but during the tenure of his office, he shall, within sixty (60) days, establish residence within Escambia County.

#### SECTION 303. VACANCY.

When a vacancy occurs in the office of the Executive Director, the Commission may designate one (1) qualified staff member to perform the duties of the Executive Director for a period not to exceed sixty (60) days.

#### SECTION 304. BOND: EXECUTIVE DIRECTOR.

Before entering upon his duties, the Executive Director shall give a bond to the Commission with a bonding company as surety, conditioned upon the faithful performance of his duties, to be approved by the Commission. The premium for said bond shall be paid by the County.

#### SECTION 305. SALARY: EXECUTIVE DIRECTOR.

The salary of the Executive Director shall be fixed from time to time by resolution, but shall not be decreased while he holds office.

## SECTION 306. POWERS AND DUTIES OF EXECUTIVE DIRECTOR

The Executive Director shall be clerk of the Commission and chief administrative officer of the County, and he shall be responsible to the Commission as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter.

The Executive Director shall have custody of the seal of the Board of County Commissioners and shall affix the same to any paper or instrument to which it shall be proper or necessary that the same be affixed. The Executive Director, as clerk of the Commission, shall give copies of instruments in his custody, to all persons requesting such instruments, attested by his signature and authenticated by said seal.

The powers and duties of the Executive Director shall include the following:

(1) He shall supervise and be responsible for the operation of all County departments, except as may be provided by this Charter.

(2) He shall be clerk and administrative officer to the Commission.

(3) He shall employ, in accordance with the Civil Service System, and, when necessary for the good of the County, shall suspend, discipline, or discharge any employee under his supervision, provided that the Executive Director shall report, at the next meeting hereafter of the Commission, any action taken by authority of this subsection.

(4) He shall submit annually to the Commission, a budget for the next fiscal year. The Executive Director

shall be responsible for the administration of the budget after its adoption by the Commission.

(4) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption.

(5) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption.

(6) He shall hold such other County offices and head such other County departments as the Commission may from time to time direct.

(7) He shall attend all meetings of the Commission, with a right to take part in the discussions.

(8) He shall prepare the agenda for each regular or special meeting and committee meetings of the Commission and shall supply facts pertinent thereto.

(9) He shall review, analyze, and forecast trends of County services, finances, and programs of all County departments and agencies receiving County funds; keep the Commission informed as to the conduct of County affairs and submit such other reports as the Commission requests.

(10) He shall see that the provisions of all franchises, leases, permits, and privileges granted by the County are observed.

(11) He shall coordinate all funding programs of all other governmental units or agencies with the County government.



(12) He shall see that all ordinances, resolutions, and orders of the Commission, and all laws of the State which are subject to enforcement by the Executive Director or by officers who are subject under this Charter to the Executive Director's direction and supervision, are faithfully executed.

(13) The Executive Director shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

(13) The Executive Director shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

#### SECTION 307. ADMINISTRATIVE CODE: INITIAL.

The Executive Director shall prepare an initial Administrative Code which shall set forth departmental organization of County government and the nature and scope of each department, together with all required rules and procedures for the operation of said departments, and a comprehensive budget procedure. Such Administrative Code shall, within nine (9) months after adoption of this Charter, be submitted to the Commission for review, amendment, and adoption. The Commission shall adopt the Administrative Code as submitted or amended within

three (3) months of the date submitted. If not adopted within three (3) months, the Administrative Code, as originally prepared by the Executive Director, shall be considered approved and shall remain in force until such time as it may be formally amended by the Commission. The Executive Director may, from time to time, submit any changes in any or all department organizations, including combinations, deletions, and creations of departments or divisions, and transfer of responsibilities between departments or divisions to the Commission for review, amendment, or adoption.

#### SECTION 308. TEMPORARY ABSENCE.

Should the Executive Director become ill or need to be absent from the County, he may designate one (1) qualified member of his staff to temporarily perform the duties of the Executive Director during his absence or disability. However, the person so designated shall not perform those duties for a period longer than fifteen (15) days without the approval of the Commission.

### ARTICLE IV

#### ADMINISTRATIVE BRANCH: ADMINISTRATIVE ORGANIZATION

#### SECTION 401. GENERAL PROVISIONS.

A. Except as provided by this Charter, the activities under the direction and supervision of the Executive Director shall be distributed among such departments, offices and agencies as are established by this Charter, or may be established, merged, or abolished thereunder by the Administrative Code.

B. Except as provided by this Charter, each department shall be administered by an individual appointed by and subject under this Charter to the direction and supervision of the Executive Director. With the consent of the Commission, the Executive Director may serve as the head of one or more such departments, and with Commission approval, may appoint one person as head of two or more such departments.

C. The Department heads shall be appointed or removed by the Executive Director, subject to the approval by a majority of the Commission, except as otherwise provided for in this Charter.

D. The department heads shall be chosen solely on the basis of their qualifications, executive and administrative abilities, with special reference to the duties of the office. Department heads and County employees shall not be employed or receive compensation from more than one appointing authority.

#### SECTION 402. DEPARTMENTAL STRUCTURE.

The departmental organization of County government and the nature and scope of each department, together with all the required rules and procedures for the operation of said department, shall be set forth in the Administrative Code. The Administrative Code shall be adopted by and may be amended by the Commission. The Executive Director shall, from time to time make recommendations as to the promulgation, adoption, and amendment of the Administrative Code.

### SECTION 403. INITIAL DEPARTMENTS AND OFFICES.

The following initial departments and offices are hereby established under this Charter:

- (1) Department of Finance.
- (2) Director of Law.
- (3) Department of Personnel.
- (4) Department of Utilities.
- (5) Department of Community Services.
- (6) Department of Transportation.
- (7) Department of Parks and Recreation.
- (8) Department of Public Works.

### SECTION 404. DEPARTMENT OF FINANCE.

There shall be a Department of Finance headed by a Director of Finance. The Director of Finance shall be responsible for the preliminary preparation of the County budget as provided by the Laws of Florida, and shall be responsible for the administration of such duties as may be assigned under the Administrative Code and this Charter. The following duties are hereby specifically imposed under the Director of Finance:

- (1) Maintaining the budget records of the Commission and County departments established under this Charter.
- (2) Maintaining inventories and records of County property and equipment as required by laws.
- (3) Supervision of central purchasing for the County.

(4) Devise a records system, including cost accounting, for any agency or institution which handles funds of the County.

(5) Devise a records system for maintaining inventories of fuels, equipment, supplies, and the distribution thereof.

#### SECTION 405. DEPARTMENT OF PERSONNEL.

There shall be a Department of Personnel, headed by a Director of Personnel. The Director of Personnel shall be responsible for preparing and recommending County personnel policy for all County departments, officers, and agencies, including classification of positions, pay and benefit plans, and the maintenance of a roster of all employees, their classification and pay scale.

#### SECTION 406. ESTABLISHMENT OF A CIVIL SERVICE SYSTEM.

There is hereby created a Civil Service Board for all classified employees of Escambia County, as defined herein, to which system all employees of the County who are now members of any of the present existing Civil Service System of the County, established under the Laws of Florida, shall be and are hereby declared to be automatically members of the Civil Service System of the County upon the effective date of this Charter.

#### SECTION 407. CIVIL SERVICE BOARD.

A. The Civil Service Board shall consist of five (5) members: one (1) shall be elected by the legislative body of the County, being the Commission of the County, and one (1) shall be elected by the School Board; one (1) shall be elected by the elected constitutional County officers, and

one (1) shall be elected by the employees of the County who are members of the classified service. The fifth member shall be named by the other four members. In the event said members cannot agree upon the fifth member within fifteen (15) days after said members take office, the chief judge of the circuit Court shall designate such member; the Board shall elect one of their members to be Chairperson, and one member to be Vice-Chairperson. Member shall receive no salary but shall be reimbursed for expenses incurred in the discharge of their official duties in accordance with Chapter 112.061, Florida Statutes.

B. The Civil Service Board of Escambia County is authorized to employ a competent secretary, legal counsel, and other additional help to carry out their duties under this Charter.

C. Each member of the Civil Service Board shall hold office for a period of four (4) years, and until his successor is elected and qualified.

D. Each appointing authority shall be authorized, empowered, and required to elect an alternate to the Civil Service Board who shall serve in the event the member so elected shall not be able to serve.

**SECTION 408. QUALIFICATIONS AND  
ELECTIONS: CIVIL SERVICE  
BOARD.**

A. Any qualified voter residing in Escambia County is eligible to be a member of the Civil Service Board, provided, however, that no person convicted of a crime involving moral turpitude, or who is an officer or employee of the County shall be eligible to hold office as a member of the Civil Service Board.

B. Any member of the Civil Service Board may be disqualified to hear and determine any cause if there exists any ground which under the Laws of the State of Florida would disqualify the judge of any court or which is ground of challenge for cause to any juror.

C. The first election of the Civil Service Board members under this Charter shall be held not less than ninety (90) days after the approval date of this Charter. The Civil Service Board members elected herein provided shall take office within ten (10) days after their election or appointment. The oath of office shall be administered to each of the Civil Service Board members by the Chairperson of the Commission.

#### **SECTION 409. MEETINGS OF CIVIL SERVICE BOARD.**

The Civil Service Board shall hold not less than one (1) regular meeting each month, and may hold special meetings when required for the transaction of business by the Board. Such meetings may be called by any two members of the Board or Secretary to the Board. Three (3) members shall constitute a quorum

#### **SECTION 410. CLASSIFIED AND UNCLASSIFIED SERVICES.**

A. County personnel is hereby divided into "classified service" and "unclassified service" as provided for in Chapter 74-480, Laws of Florida, as amended.

B. The Civil Service Board shall adopt, amend, and enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct, and efficiency of employees in the classified service.

C. The Civil Service Board shall be the sole authority vested with the power to approve and confirm or deny disciplinary action against any employee within the classified service.

#### SECTION 411. TRANSFER OF POWER.

Except where inconsistent with this Charter, the functions, responsibilities, duties and obligations of the existing Civil Service Board, established under Chapter 74-480, Laws of Florida, as amended, are hereby transferred and vested in the Civil Service Board as established under this Charter, and except where inconsistent with this Charter, the requirements under Chapter 74-480, Laws of Florida, as amended, shall remain in full force and effect.

#### SECTION 412. EXISTING BOARD CONTINUANCE.

Civil Service Board members existing at the time this Charter takes effect shall continue in office until their successors are elected and qualified as provided by this Charter, at which time the Board shall cease to exist.

#### SECTION 413. INDEPENDENT NATURE OF BOARD.

The Civil Service Board shall be independent of all members of administrative service of the County and shall conduct all hearings, trials, and proceedings of every character in an impartial, just manner, designed to promote justice and efficiency.

#### SECTION 414. EMPLOYEES UNDER ECONOMIC OPPORTUNITY ACT 1964.

No person shall hereafter become a member of the classified service of the County, notwithstanding any pro-



visions of this Article to the contrary, who is employed by the County solely for the purpose of participating in the federally sponsored Economic Opportunity Act of 1964, as amended; provided further that such employees waive any and all rights to participate in any pension system maintained for employees of the County, except Social Security benefits; provided, however, this Section may be waived in its entirety by ordinance enacted by the Commission.

**SECTION 415. APPOINTMENT:  
DIRECTOR OF PERSONNEL.**

The Director of the Department of Personnel shall be appointed by the Chairperson of the Commission, subject to confirmation by a majority vote of all members of the Commission.

**SECTION 416. ANNUAL REPORT.**

The Director of Personnel shall report annually, in written form, to each appointing authority concerning the administrative needs of the Service, the personnel and positions in the Service, and the Compensation provided therefor, the examinations held by the Board, the appointments made, service ratings and removals in the Civil Service, the operation of the rules of the Civil Service Board, and recommendations for promoting efficiency and economy in the Service, with details of expenditure and progress of work.

**SECTION 417. DIRECTOR OF LAW:  
QUALIFICATIONS AND DUTIES.**

The Director of Law shall be an attorney at law who shall have practiced in the State of Florida for at least five (5) years. He shall be appointed by the Commission and be

the chief legal advisor of and attorney for the Commission and all departments and offices thereof in matters relating to their official powers and duties, except as otherwise provided by this Charter. It shall be his duty, either personally or by such assistance as he may designate, to perform all services incident to the Department of Law; to attend all meetings of the Commission; to give advice in writing, when so requested, to the Commission, the Executive Director, or the director of any department; to prosecute or defend, as the case may be, all cases to which the County may be a party; to prosecute all offenses against the ordinances of the County and for such offenses against the laws of the State that may be required by him by law; to prepare all contracts, bonds and other instruments in writing in which the County is concerned, and to endorse on each his approval of the form and the correctness thereof; and to perform such other duties of a legal nature as the Commission may by ordinance or resolution require. In addition to the duties imposed upon the Director of Law by this Charter or required of him by ordinance or resolution of the Commission, he shall perform any duties imposed upon the chief legal officers of counties by law.

## ARTICLE V

### ELECTED COUNTY OFFICERS CONTINUED

#### SECTION 501. COMPTROLLER.

The office of Comptroller, as provided by law, shall continue, and all laws applicable thereto shall continue at full force and effect, except where inconsistent with this Charter. The Comptroller shall qualify, be nominated,

elected, and serve as provided by the Constitution and Laws of Florida.

#### **SECTION 502. PROPERTY APPRAISER.**

The office of Property Appraiser shall continue, and all laws applicable thereto shall continue at full force and effect. The Property Appraiser shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

#### **SECTION 503. SHERIFF.**

The constitutional office of Sheriff shall continue, and all laws applicable thereto shall continue at full force and effect. The Sheriff shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

#### **SECTION 504. SUPERVISOR OF ELECTIONS.**

The constitutional office of Supervisor of Elections shall continue, and laws applicable thereto shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

#### **SECTION 505. TAX COLLECTOR.**

The constitutional office of Tax Collector shall continue, and all laws applicable thereto shall continue at full force and effect. The Tax Collector shall qualify, be nominated, elected, and serve as provided by the Constitution and Laws of Florida.

## ARTICLE VI

## JUDICIAL SYSTEM

## SECTION 601. JUDICIAL SYSTEM.

The judicial system of the Charter government shall be as provided by the Constitution and Laws of Florida.

## SECTION 602. JUDICIAL OFFICES.

The office of the Clerk of Circuit Court, judges of the County Court, and all other offices of the various courts of the County shall continue, and all laws applicable thereto shall continue at full force and effect. The Clerk of Circuit Court shall qualify, be nominated, elected, and serve as is provided by the Constitution and Laws of Florida.

## ARTICLE VII

## FINANCIAL PROCEDURES

## SECTION 701. FISCAL YEAR.

The fiscal year of the Charter government shall begin on the first day of October of each year and shall end on the following thirtieth day of September.

## SECTION 702. UNIFORM BUDGETARY SYSTEM.

All County operations shall utilize a unified and uniform budget system. All fees collected by officers and employees of the County shall be deposited in the appropriate County fund as provided by law. The head of each County department, elected County official office or agency receiving County monies, shall furnish the Executive Director a detailed budget as may be required for the ensuing year's

operation, a capital program, and such additional information as may be required by the Executive Director or the Commission prior to July 1 of each year. On or before the first day of August of each year, the Director of the Department of Finance shall determine the estimated revenues of the County and, under the supervision of the County Executive Director, shall prepare a tentative budget with comparative analysis from past years.

#### **SECTION 703. BUDGET REVIEW.**

Prior to September 15 of each year, the County Commission shall review the tentative budget and capital program as submitted by the Executive Director, together with the Executive Director's recommendations and the original budget request of any elected County official, and shall make such additions, deletions, or changes as may be necessary to insure the proper funding of operations of County government. The County Commission shall take action to insure that the total budget provides sufficient funds on an annual basis for all agencies and departments to carry out their duties and functions, as provided by this Charter, the Constitution, and the Laws of Florida.

#### **SECTION 704. PUBLIC HEARING.**

Prior to October 1 of each year, a public hearing shall be held on the County budget and capital program. After the public hearing, the Commission may adopt the budget and capital program with or without amendment. A notice of such public hearing and a summary of the budget of each elected official, department, and agency shall be published in a newspaper of general circulation in the County at least ten (10) days before the date of such hearing. Final adoption of the budget by the Commission shall be made prior to October 1 of each year.

**SECTION 705. FINANCIAL DISCLOSURE.**

Any agency or County officer receiving County appropriated funds, shall make a complete and full disclosure of all financial operations annually, including all sources of funds, disbursements, and budget of the agency or county officer. Each agency and County officer shall file such financial records with the Commission, and copies of such records shall be available to any members of the public at a reasonable cost.

**SECTION 706. REQUIRED AUDIT.**

The County Comptroller shall, within twelve (12) months of the next fiscal year, complete an audit of the accounts and other evidence of financial transactions of the County and of every County department and office. If the State makes such an audit, the Comptroller may accept it as satisfying the requirements of this Section.

**ARTICLE VIII****ELECTIONS****SECTION 801. ELECTION PROCEDURES.**

All elections shall be held and conducted pursuant to the provisions of Article VI of the Constitution and Laws of Florida, except as otherwise provided in this Charter.

**SECTION 802. CANVASSING BOARD.**

There shall be a Canvassing Board composed of the Supervisor of Elections, the Chairperson of the Commission, and the presiding judge of the judicial circuit in which Escambia County is situated, or any circuit judge in such judicial circuit appointed by the presiding judge.

## ARTICLE IX

## MISCELLANEOUS PROVISIONS

## SECTION 901. LAWS CONTINUED.

All laws, ordinances, regulations and resolutions of the County shall remain operative except where inconsistent with this Charter.

## SECTION 902. ADMINISTRATIVE CODE.

Any Administrative Code adopted and amended shall not be inconsistent with the provisions of this Charter.

## SECTION 903. RIGHTS RESERVED.

All actions, rights of action, claims, contracts and obligations of persons, corporations, public bodies or agencies existing on the date this Charter becomes effective shall continue to be valid as if this Charter had not been adopted.

SECTION 904. PUBLIC DEBT AND BOND  
OBLIGATIONS CONTINUED AND  
RECOGNIZED.

All public debts, bonds, revenue certificates, revenue bonds and tax anticipation certificates heretofore incurred or issued by Escambia County shall remain valid and in full force and effect and shall be secured by the same sources of revenue as before the adoption of this Charter and to the extent necessary all ordinances, resolutions or other actions pertaining to same shall remain in full force and effect until payment in full of such public debts and securities.

## SECTION 905. PROCEEDINGS CONTINUED.

All petitions, hearings and other proceedings pending before the former government shall remain in full force and effect as established under this Charter.

**SECTION 906. CITIZENS' ADVISORY BOARDS.**

All advisory boards existing at the date of the adoption of this Charter shall continue unless abolished by a majority vote of the full Commission. The Commission may create by resolution, specifying the duties and membership thereof, such advisory boards as it deems necessary. Members of such advisory boards shall be nominated by the Chairperson of the Commission, subject to confirmation by a majority vote of the full Commission.

**SECTION 907. BOARD OF TAX ADJUSTMENT.**

The Board of Tax Adjustment, as provided by the Laws of Florida, shall continue under this Charter.

**SECTION 908. PETITION AND ORDINANCE.**

Changes in this Charter or an ordinance may be proposed by: (1) a petition signed by at least ten percent (10%) of the number of registered voters in Escambia County. When such change is filed with the Supervisor of Elections, it shall be submitted to the voters at an election to be held in accordance with the requirements of the Constitution and Laws of Florida, and if approved at the election, the change shall become a part of this Charter.

**SECTION 909. NOTICE OF CHARTER  
AMENDMENT REFERENDUM.**

In addition to any other notice requirements provided by this Charter or general law, whenever a Charter amendment is submitted to referendum, the exact language of the proposed Charter amendment or amendments, shall be published at least twice in a newspaper of general circulation in the County. One notice shall be published not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be



published not more than ten (10) days nor less than five (5) days prior to the referendum election.

#### SECTION 910. CODE OF ETHICS.

The Code of Ethics shall be the Standards of Conduct for Public Officers and employees as provided by general law, and shall have full effect on all employees and office holders under the Charter government. Penalty for violation shall be provided by ordinance, or as otherwise provided by general law.

#### SECTION 911. PROHIBITIONS.

No person shall be appointed to or removed from or in any way favored or discriminated against with respect to, any County position or appointive County administrative office because of sex, race, political or religious opinions or affiliations.

### ARTICLE X

#### TRANSITION PROVISIONS

##### SECTION 1001. REFERENDUM AND BALLOT.

The election on this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

**"SHALL THERE BE A HOME RULE CHARTER FOR ESCAMBIA COUNTY, FLORIDA, PROVIDING FOR THE RESTRUCTURING OF COUNTY GOVERNMENT, WHICH SHALL TAKE EFFECT \_\_\_\_, AS PROPOSED BY CHARTER DATED \_\_\_\_."**

**FOR CHARTER:**

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**AGAINST CHARTER:**

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**SECTION 1002. FORM OF NOTICE.**

The form of notice of the election by which this Charter shall be submitted to referendum shall contain the complete text for this Charter.

**SECTION 1003. EFFECTIVE DATE.**

This Charter shall become law when approved by a majority of those electors voting on the matter in an election to be held in the County under the provisions of the Constitution and the Laws of Florida. The Charter government shall assume all powers and duties provided by this Charter on the first day of \_\_\_\_, the effective date of this Charter.

**SECTION 1004. INITIAL CHARTER COUNTY EXECUTIVE DIRECTOR.**

Upon the election of the additional two (2) County Commissioners, the seven (7) member Commission, immediately upon the assumption of their duties, shall initiate the necessary procedures for employing the initial Executive Director as established by this Charter. It shall be the obligation of the Commission to employ the initial Executive Director within three (3) months of the date on which they take office. Pending the selection of the Executive Director, the Chairperson of the Commission shall be empowered to appoint an interim Executive Director with powers as may be established by the Commission.

## SECTION 1005. DISTRICTS.

The initial Commission districts shall be constituted as the constitutional Commission districts would have been constituted if this Charter had not been adopted.

## SECTION 1006. DEPARTMENTS CONTINUED.

Except as provided by this Charter, all County departments and agencies shall continue until reorganized in accordance with the provisions of this Charter and the Administrative Code.

## SECTION 1007. EMPLOYEES' CONTINUATION.

All employees of the former County government shall, on the effective date of this Charter, become employees of the Charter government without loss of benefits. Salaries of all employees shall be continued at no less than the same level as on the date of the referendum approving this Charter, unless at such time as the Commission shall provide for overall adjustment for all County employees.

## BRIEF ANNOTATION OF CHARTER PROVISIONS

### **Plan of County Government**

If any structure of government is unsophisticated and provincial, it is certainly the Commission form of government established in 1885 for Florida counties, which were then primarily rural and agrarian.

The 1968 Constitution provides for home rule powers, and it is now possible for the people to adopt a Charter and thus modernize and restructure the outdated form of local County government. The Charter will provide a more efficient and responsive form of government for

Escambia County. The plan of representation and the pattern of administration will go a long way towards fostering responsible and accountable County government.

The Charter provides the County with a written plan of government which may be modified and amended at the local level rather than having to look to the provisions of the general or special laws for determination of how County government is to be operated. If any disruption occurs, it will be due to the personalities involved and not the system developed.

The Charter maintains all constitutional elective officers which insures accessibility and effectively pinpoints accountability to the voter.

### **Powers of the County Commission**

The language of the Charter in no way detracts from or restricts the legislative powers of the County Commissioners granted under the constitution and laws of Florida. The Commission has the specific powers and duties to adopt rules of procedure as shall be necessary for the orderly transaction of business of the Commission.

The County Commission, under the Charter, must act within the general framework of the duties enumerated under the Charter, the constitution, and the provisions of general law which prevails with or without the County Charter.

The procedure for adopting and repealing County Ordinances is clearly outlined in Florida General Law, Chapter 125.66-125.69. However, the Charter expands the legislative powers of the County Commission, which is not prohibited by the constitution and general laws.

### **Limitation of Terms — County Commissioners**

The limitation of terms is restricted to two consecutive terms for any County Commissioner. The Charter does not provide a limitation on the number of years of public service at the County level. The limitation on County Commissioners was included only to insure that no office of the governing (legislative) body be indefinitely reserved for any particular individual. The limitation also insures that a meaningful check is placed on district representation to effectively eliminate the possibility of ward politics.

### **Residency Requirements of Members of Board of County Commissioners**

It is important to establish residency requirements for all Commission offices. The Charter establishes a minimum of one-year residency in the County for all Commission officers, and six months' district residency within the respective district. Currently, there is no requirement other than residing in the district at the time of qualifying. This would allow someone totally unfamiliar with the County or district to run for office.

### **Initiative and Referendum Provisions**

The initiative and referendum provisions of the proposed Charter are additional measures which insure greater citizen involvement and participation in the County government legislative process. There are no provisions for initiative and referendum under the present form of government. This provision guarantees the citizen the right to change the form of County government. While it may be possible for a special interest group to obtain sufficient signatures to meet the petition requirements, it should be noted that this would only insure that the ques-

tion be placed on the ballot. A majority of the electors in the County, in a referendum, must approve any petition proposal. A ten percent of the electors' signature requirement is high enough to eliminate abuses and low enough to allow the petition process to be meaningful.

### **Executive Director — Authority**

The current position of the County Executive Director was established by the weakest possible method — by a simple Commission resolution which could be abolished by the vote of three of the County Commissioners.

The line of authority and chain of administrative command under the current structure of County government is unclear and its legality questionable. The basic authority of the County Executive Director, as established in the Charter, separates the administrative and legislative functions of County government and clearly provides that the County Executive Director shall be the Chief Administrative Officer of the County.

The Charter has clearly established, on a sound legal basis, the position of County Executive Director which can only be changed or abolished by a vote of the County electors. The Charter does not give any tenure to the County Executive Director, and the Commissioners should not be bound by the requirements imposed by tenure. The Commissioners must be able to dismiss the Executive Director, otherwise, this plan of government would not work.

### **County Executive Director — Qualifications**

The Charter establishes guidelines for the qualifications of the County Executive Director. The only specific requirements are that he maintain residence in the County

during his tenure of office and not engage in any other business or occupation. To include stringent requirements as to education and experience, might meet the test today but fall short in the future. The Charter Government Study Committee felt that the County Commission should be given the flexibility of establishing prerequisites at the time the job is to be filled. Numerous educational degrees do not insure that an individual will be a capable administrator. By the same token, extensive work experience does not guarantee competency. In a representative form of government, certain responsibility and faith must be placed in elected representatives to employ the best qualified person.

#### **Department Heads — Selection**

This Charter clearly gives the County Executive Director the authority to select the department heads that will be responsible to the County Executive Director (with approval of the County Commissioners). A County Executive Director that does not have the support of the County Commission will not remain in office, and therefore the approval of the County Commission of such appointments should be routine. It will, however, provide a very necessary check and balance system that is so vital in any form of government.

The requirement that the County Commission must approve all dismissals of department heads will grant to those persons taking the job as department heads in County government that there will be some appeal process if they should temporarily be at cross purposes with the County Executive Director or have a personality conflict.



**Non-Interference Language**

The non-interference language in the Charter is for good reasons — to keep individual members of the Commission from trying to exert their individual opinions and personal prejudices on the County department heads and employees. They must be free to carry out the administrative functions of County government through the Executive Director, and in accordance with the policies established by the Board of County Commissioners. Without this proper chain of command, the department heads and the employees may be caught between individual Commissioners or the Commission and the Executive Director.

**Administrative Code**

The provisions for an Administrative Code provides the procedure for establishing the initial Administrative Code. The Charter requirement for an Administrative Code is significant in that the nature and scope of each department and all rules and responsibilities and procedures for County departments must be established in written form and approved by the Commission. The line authority structure of current County government is “fuzzy” at best. The Administrative Code provides a way for the department heads, the employees, the citizens, and the elected officials to know who is suppose to be doing what. The Administrative Code clearly pinpoints responsibility and accountability according to the established policy of the Commission.

**Chairperson of Commission**

Under the proposed Charter, the Chairperson of the County Commission is considered the legislative leader of the County and, as such, is responsible for the various



legislative programs considered by the County, and is a person that the Commissioners and the citizens will look to for leadership.

The Chairperson will be more responsive to the people and will give people, for the first time, the opportunity to pinpoint responsibility. With this responsibility, it follows that the Chairperson should have a greater voice in the selection of the County Executive Director and the Department of Personnel, the two most important positions in the County government. Obviously, the Chairperson is not going to be able to appoint someone for these positions that is not acceptable to the majority of the Commission, and as a practical matter, the selection of these persons will be a joint effort of the entire Commission.

### **Separation of Powers**

The proposed Charter clearly establishes a separation of responsibilities and functions and legally divides legislative and administrative duties. The division of powers has been clearly implemented throughout the Charter as a careful reading will indicate. The Charter permits the use by the Commission of all powers granted by the Charter, or General Law, and provides for an orderly pattern of action of which the County Commission can transact its official business.

### **County and Municipal Ordinances**

In order to meet the requirements of the Florida Constitution, Article VIII, Section 1(g), which states: "The Charter shall provide which shall prevail in the event of conflict between County and municipal ordinances." Therefore, the Charter provides that County ordinances

shall prevail Countywide, except where a County ordinance is in conflict with a municipal ordinance. In those cases, the municipal ordinance within the municipality will prevail.

### **Representation**

The plan of representation in the proposed Charter establishes a seven (7) member County Commission whose duties are legislative in nature. The plan will provide a combination of district and at-large representation. Five (5) Commissioners will be elected from districts averaging approximately 50,000 persons, and two (2) Commissioners will be elected at large.

District representation will cut the mounting cost of running for Countywide election, and the increasing reliance on special interest for financing. The districts will also insure meaningful representation and allow close identification and scrutiny of the district Commissioners. The district Commissioners will be closer to the people who elected them and more responsive to district problems and needs. The district Commissioners will have a ready and in-hand knowledge of their districts. The two (2) Commissioners elected at large will provide balanced representation; therefore, the Charter provides for a combination of district and at-large representation.

There may be an argument that district Commissioners may be responsive to district pressures first and consider vital Countywide matters second. It is based upon the assumption and not fact and does not take into consideration the fact that the County Commission can only act as a unit in passing County laws or establishing policy or issuing administrative directives.

With five of the seven County Commissioners elected by districts, there will be a better opportunity for voter identification. In a republican form of government, representation must be meaningful to be responsive and effective. There is no magic number for a representative body to insure smooth, efficient, and representative government. The present five-member Commission was originally established in 1885 when Escambia County had a population of approximately fifteen hundred persons.

The Charter Government Study Committee felt that the Commission should be enlarged to insure that the plan of representation would be equitable, representative, and responsive. The language of the Charter was drafted to insure compliance with the Constitutional one-man, one-vote principle, and the provisions of Article VIII, Subsection (1) and (3) of the Florida Constitution.

### **Budget Preparation**

Currently, under special law, the Comptroller (elected official) is required to prepare the County budget for submission to the Board of County Commissioners. Since a budget is clearly an administrative and management tool, it was felt that the budget preparation should be in the hands of the administrative and legislative branch of County government; therefore, the Charter clearly places the responsibility of the preparation of the budget, which is essentially a management tool, with the County Executive Director. The mechanics of putting the budget in order logically falls under the responsibility of the Director of Finance of the Department of Finance.

The Committee sees no conflict in having the Executive Director and the Director of Finance working together to prepare the budget since both positions are administrative

in nature, but felt that it was essential that the Charter clearly establish who has the responsibility for final preparation and submission of the budget to the County Commission for approval.

### **Audits**

The County expenditures are now approaching \$40 million a year. Most of which is being expended without the control of regular audits. State law requires that there be post audits of County governments and their departments by the Auditor General of the State. However, there is no specific requirement that there be annual post audits, and no such audits are being performed on an annual basis by the State.

Considering the size and scope of the operation of Escambia County's government, the committee felt that it was advisable to require annual audits. However, if the State makes an audit of the County or any of its agencies within one year after the fiscal year, then it will not be necessary for the Comptroller to make an audit. This provision merely provides a check to insure good business practices in the event the State does not perform its statutory duty. All major businesses in the country follow this good business practice.

### **Department of Personnel and Civil Service Board**

Personnel policy and pay is an administrative function and, as such, should be under the legislative and administrative body of the County. The present Civil Service Board has broad powers of personnel policies and provides that the Civil Service Board determine and establish pay scales for all classified positions.

The Charter provides that all County departments, of-

ficers, and agencies utilize administrative services of the County Personnel Department. The Charter does not outline each and every duty required of the Personnel Department but does require that they be outlined in the Administrative Code. The Charter permits reorganization of this department as needed. However, the Charter does provide for a Civil Service Board that has the responsibility to enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct, and efficiency of employees in the classified service. It also provides for job protection of classified positions and the elimination of arbitrary capricious action against employees by the administrative staff or legislative body. The Charter also provides protection for all existing employees under the present Civil Service System.

#### OPTIONAL METHODS OF COUNTY GOVERNMENT

The "County Administration Law of 1974," which is Part III of Chapter 125 of the Florida Statutes, authorizes the Board of County Commissioners to pass a County ordinance adopting the "County Administration Law of 1974," which would accomplish the separation of administrative and legislative powers of County government and would provide some of the changes outlined in the proposed Charter (*See pages 28-30*).

Part IV of Chapter 125 of the Florida Statutes is known as the "Option County Charter Law" and provides an alternate way to Charter government; therefore, the Board of County Commissioners may propose by ordinance a Charter consistent with the provisions of this part and provide for a special election pursuant to the procedures established in Section 125.64, Florida Statutes, without

regard to the time limitation contained in Section 125.645(e). This part gives to the Board of County Commissioners the following optional forms of County government:

- (1) County Executive Form (*See pages 1210-17*);
- (2) County Manager Form (*See proposed Charter, pages 1161-94*); and
- (3) County Chairman/Administrator Plan (*See pages 1210-17*).

## CHAPTER 125, FLORIDA STATUTES

### COUNTY GOVERNMENT

### PART III

### COUNTY ADMINISTRATION

125.70 Short title.

125.71 Purpose.

125.72 Application of the part.

125.73 County administrator; appointment, qualifications, compensation.

125.74 County administrator; powers and duties.

**125.70 SHORT TITLE.**— This part shall be known and may be cited as the “County Administration Law of 1974.”

**125.71 PURPOSE.**— It is the legislative intent that it is necessary to authorize a form of county administration that best assures an adequate and efficient provision of services to the citizens in this state, that provides for coordinated administration of county departments to better

protect the health, welfare, safety, and quality of life of the residents in each of the more urbanized counties, and that places in the hands of a county administrator the multitude of details which must necessarily arise from the operation of a county as a unit of local government and, thus, enables the board of county commissioners to perform freely, without unnecessary interruption, its fundamental intended purpose of making policies within the framework of law applicable to county government in this state. It is the further legislative intent to provide a formula and structure for the economic and efficient conduct of county affairs by making the county administrator established by this act responsible for handling of all things necessary to accomplish and bring to fruition the policies established by the board of county commissioners.

**125.72 APPLICATION OF THE PART.** — The provisions of this part may apply to any county in this state which has not adopted a charter form of county government upon passage of a county ordinance by the governing body of such county expressly adopting this part.

**125.73. COUNTY ADMINISTRATOR; APPOINTMENT, QUALIFICATIONS, COMPENSATION.** —

(1) Each county to which this part applies shall appoint a county administrator, who shall be the administrative head of the county and shall be responsible for the administration of all departments of the county government which the board of county commissioners has authority to control pursuant to this act, the general laws of Florida, or other applicable legislation.

(2) The county administrator shall be qualified by administrative and executive experience and ability to serve as the chief administrator of the county. He shall be ap-



pointed by an affirmative vote of not less than three members of the board of county commissioners and may be removed at any time by an affirmative vote, upon notice, of not less than three members of the board, after a hearing if such be requested by the county administrator. The administrator need not be a resident of the county at the time of his appointment, but during his tenure in office he shall reside within the county.

(3) The compensation of the administrator shall be fixed by the board of county commissioners unless otherwise provided by law.

(4) The office of county administrator shall be deemed vacant if the incumbent moves his residence from the county or is, by death, illness, or other casualty, unable to continue in office. A vacancy in the office shall be filled in the same manner as the original appointment. The board of county commissioners may appoint an acting administrator in the case of vacancy or temporary absence or disability until a successor has been appointed and qualified or the administrator returns.

#### 125.74. COUNTY ADMINISTRATOR: POWERS AND DUTIES. —

(1) The administrator may be responsible for the administration of all departments responsible to the board of county commissioners and for the proper administration of all affairs under the jurisdiction of the board. To that end, the administrator may, by way of enumeration and not by way of limitation, have the following specific powers and duties to:

(a) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board to assure that they are faithfully executed.



(b) Report to the board on action taken pursuant to any directive or policy within the time set by the board and provide an annual report to the board on the state of the county, the work of the previous year, and any recommendations as to actions or programs he deems necessary for the improvement of the county and the welfare of its residents.

(c) Provide the board, or individual members thereof, upon request, with data or information concerning county government and to provide advice and recommendations on county government operations to the board.

(d) Prepare and submit to the board of county commissioners for its consideration and adoption an annual operating budget, a capital budget, and a capital program.

(e) Establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection with the budget and supervise and administer all phases of the budgetary process.

(f) Prepare and submit to the board after the end of each fiscal year a complete report on the finances and administrative activities of the county for the preceding year and submit his recommendations.

(g) Supervise the care and custody of all county property.

(h) Recommend to the board a current position classification and pay plan for all positions in county service.

(i) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures.

(j) Organize the work of county departments, subject to an administrator and adopted by the board, and review the departments, administration, and operation of the county and make recommendations pertaining thereto for reorganization by the board.

(k) Select, employ, and supervise all personnel and fill all vacancies, positions, or employment under the jurisdiction of the board. However, the employment of all department heads shall require confirmation by the board of county commissioners.

(l) Suspend, discharge, or remove any employee under the jurisdiction of the board pursuant to procedures adopted by the board.

(m) Negotiate leases, contracts, and other agreements, including consultant services, for the county, subject to approval of the board, and make recommendations concerning the nature and location of county improvements.

(n) See that all terms and conditions in all leases, contracts, and agreements are performed and notify the board of any noted violation thereof.

(o) Order, upon advising the board, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so.

(p) Attend all meetings of the board with authority to participate in the discussion of any matter.

(q) Perform such other duties as may be required of him by the board of county commissioners.

(2) It is the intent of the Legislature to grant to the county administrator only those powers and duties which are administrative or ministerial in nature and not to delegate any governmental power imbued in the board of county commissioners as the governing body of the county pursuant to Section 1(e), Art. VIII of the State Constitution. To that end, the above specifically enumerated powers are to be construed as administrative in nature, and in any exercise of governmental power the administrator shall only be performing the duty of advising the board of county commissioners in its role as the policy-setting governing body of the county.

## CHAPTER 125, FLORIDA STATUTES

### COUNTY GOVERNMENT

#### PART IV

#### OPTIONAL COUNTY CHARTERS

- 125.80 Short title.
- 125.81 Definitions.
- 125.82 Charter adoption by ordinance.
- 125.83 County charters; general provisions.
- 125.84 County charters; optional forms.
- 125.85 County charters; executive responsibilities.
- 125.86 County charters; legislative responsibilities.
- 125.87 Administrative code; adoption and amendment.
- 125.88 Civil service.

**125.80 SHORT TITLE.** — This part shall be known and may be cited as the "Optional County Charter Law."

**125.81 DEFINITIONS.**— As used in this part, the following words and terms shall have the meanings ascribed to them in this section except when the context clearly indicates otherwise:

(1) "County charter" means the charter by which county government in this state may exercise all powers of local self-government not inconsistent with general law and as adopted by a vote of the electors of the county.

(2) "Form of county government" is that form adopted by the electors providing for the operation of a county government operating under a charter which shall be provided in the charter.

(3) "Officer" means all officials of county government operating under a charter which shall be provided in the charter.

**125.82 CHARTER ADOPTION BY ORDINANCE.**— As a supplemental and alternative way to the provisions of ss. 125.60-125.64, inclusive, the board of county commissioners may propose by ordinance a charter consistent with the provisions of this part and provide for a special election pursuant to the procedures established in s. 125.64 without regard to the time limitation contained in subsection 125.64(3).

**125.83 COUNTY CHARTERS: GENERAL PROVISIONS.**—

(1) A county charter may prescribe one of the optional forms of government herein authorized, and shall clearly define the responsibility for legislative and executive functions in accordance with the provisions of this chapter.

(2) The county charter shall require all elective offices to be filled only by qualified voters of the county. All ap-

pointed offices may be filled by nonresidents of the county; however, the charter may require that, upon appointment, such officers shall reside in the county during their tenure in office.

(3) The county charter shall define "vacancy in office" and provide methods for filling such vacancy.

(4) The county charter shall provide that the salaries of all county officers shall be provided by ordinance and shall not be lowered during an officer's term in office.

(5) The county charter shall provide a schedule for the transfer of governmental functions into the charter form of government as adopted.

**125.84 COUNTY CHARTERS: OPTIONAL FORMS.** — Any county desiring to adopt a county charter shall provide for one of the following optional forms of government:

(1) **COUNTY EXECUTIVE FORM.** — The county executive form shall provide for governance by an elected board of commissioners and an elected county executive and such other officers as may be duly elected or appointed pursuant to the charter. The elected county executive shall exercise the executive responsibilities assigned by the charter and shall, in addition, approve each ordinance by signing it or allowing it to become approved without signature by failing to veto it or may veto any ordinance by returning it to the clerk of the board within 10 days of passage with a written statement of his objections. If two-thirds of the members of the board present and voting and constituting a quorum shall, upon reconsideration, vote for the ordinance, the executive's veto shall be overridden and the ordinance shall become law in 10 days or at such other time as may be provided in the ordinance

or by resolution of the board, without the executive's signature.

(2) **COUNTY MANAGER FORM.**— The county manager form shall provide for governance by an elected board of commissioners and an appointed county manager and such other officers as may be duly elected or appointed pursuant to the charter. The county manager shall be appointed by, and serve at the pleasure of, the board and shall exercise the executive responsibilities assigned by the charter.

(3) **COUNTY CHAIRMAN/ADMINISTRATOR PLAN.**— The county chairman/administrator plan shall provide for governance by an elected board of commissioners, presided over by an elected chairman who shall vote only in case of tie, and an appointed county administrator and such other officers as may be duly elected or appointed pursuant to the charter. The county administrator shall be appointed by, and serve at the pleasure of, the chairman. The chairman shall exercise, in conjunction with the administrator, the executive responsibilities assigned by the charter.

**125.85 COUNTY CHARTERS; EXECUTIVE RESPONSIBILITIES.**— The executive responsibilities and power of the county shall be assigned to, and vested in, the appropriate executive officer, pursuant to the optional form adopted under s. 125.83, and shall consist of the following powers and duties:

(1) Report annually, or more often if necessary, to the board of commissioners and to the citizens \*(on) the state

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\*NOTE.— "On" substituted for "of" by the editors.

of the county, the work of the previous year, recommendations for action or programs for improvement of the county, and the welfare of its residents;

(2) Prepare and submit to the board for its consideration and adoption an annual operating budget, a capital budget, and a capital program; establish the schedules and procedures to be followed by all county departments, offices, and agencies in connection therewith; and supervise and administer all phases of the budgetary process;

(3) Administer and carry out the directives and policies of the board of county commissioners and enforce all orders, resolutions, ordinances, and regulations of the board, the county charter, and all applicable general law, to assure that they are faithfully executed;

(4) Supervise the care and custody of all county property, institutions, and agencies;

(5) Supervise the collection of revenues, audit and control all disbursements and expenditures, and prepare a complete account of all expenditures;

(6) Review, analyze, and forecast trends of county services and finances and programs of all boards, commissions, agencies, and other county bodies and report and recommend thereon to the board;

(7) Develop, install, and maintain centralized budgeting, personnel, legal, and purchasing procedures as may be authorized by the administrative code;

(8) Negotiate contracts, bonds, or other instruments for the county, subject to board approval; make recommendations concerning the nature and location of county

improvements; and execute services determined by the board;

(9) Assure that all terms and conditions imposed in favor of the county or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;

(10) Supervise, direct, and control all county administrative departments;

(11) Appoint, with the advice and consent of the board, all appointed departmental heads, who shall serve at his pleasure, and employ pursuant to appropriation and the administrative code, such personnel as necessary to administer county functions and services;

(12) Order, at his discretion, any agency under his jurisdiction as specified in the administrative code to undertake any task for any other agency on a temporary basis if he deems it necessary for the proper and efficient administration of the county government to do so; and

(13) Any other power or duty which may be assigned by county charter or by ordinance or resolution of the board.

**125.86. COUNTY CHARTERS: LEGISLATIVE RESPONSIBILITIES.** — The legislative responsibilities and power of the county shall be assigned to, and vested in, the board of county commissioners and shall consist of the following powers and duties:

(1) Advise and consent to all appointments by the executive for which board confirmation is specified;

(2) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county;



(3) Appoint a clerk to the board who shall serve at its pleasure and keep the records and minutes of the board;

(4) Approve the annual operating and capital budgets and any long-term capital or financial program;

(5) Conduct continuing studies in the operation of county programs and services and take action on programs for improvement of the county and the welfare of its residents;

(6) Adopt, and amend as necessary, a county administrative code to govern the operation of the county;

(7) Adopt, pursuant to the provisions of the charter, such ordinances of county-wide force and effect as are necessary for the health, safety, and welfare of the residents. It is the specific legislative intent to recognize that a county charter may properly determine that certain governmental areas are more conducive to uniform county-wide enforcement and may provide the county government powers in relation to those areas as recognized and as may be amended from time to time by the people of that county; and

(8) All other powers of local self-government not inconsistent with general law as recognized by the Constitution and laws of the state and which have not been limited by the county charter.

#### 125.87. ADMINISTRATIVE CODE; ADOPTION AND AMENDMENT. —

(1) Following the organization of the first board of county commissioners elected pursuant to a charter, the board of commissioners shall adopt an administrative code organizing the administration of the county government and setting forth the duties and responsibilities and

powers of all county officials and agencies pursuant to the provisions of the charter.

(2) The administrative code shall be effective upon adoption or as otherwise provided therein, and all existing agencies shall assume the form, perform the duties, and exercise the power granted them under the administrative code and shall do so in the manner prescribed.

#### 125.88 CIVIL SERVICE. —

(1) Upon adoption of an administrative code and also upon the adoption of a charter, all officers and employees in the classified service of the county shall be transferred to the department, division, or agency to which the functions, powers, and duties in which they were engaged are allocated under the administrative code. Such transfer shall be without examination or diminution of existing compensation, pension or retirement rights, privileges, or obligations of any such officer or employee existing immediately prior to the referendum at which the charter was adopted. It is the intent of the Legislature that the adoption of any plan required by the charter shall not adversely affect the civil service tenure, pension, seniority, or promotional rights of any county officer or employee in the classified service.

(2) The board of county commissioners of any county adopting a charter may, by ordinance, administer the merit system through a county department of civil service unless otherwise provided by the charter. Such administration shall include classification, recruitment, examination, establishment of eligibility lists, grievances, compensation, and other conditions of employment pursuant to law.

## RECOMMENDATIONS AND OBSERVATIONS

### **Legislative — Administrative Functions**

The chief role of the County Commission should be to adopt policy. It should be a legislative body rather than an administrative body. There are two principles which should be observed in maintaining a distinction between legislative and administrative functions: (1) the legislative body cannot delegate its powers of a legislative character, and (2) the administrative details and the responsibility for implementation of policies should be delegated to the Executive Director.

Although there have been some significant improvements over the last few years, the Board of County Commissioners still spends a great deal of its time in exercising administrative functions which can be more properly delegated to the Executive Director of the County. It is a cardinal rule of public administrative practice that authority is increased through delegation. The time that is spent on handling routine administrative matters can be much better utilized in the development, formulation, and evaluation of policies by the Board of County Commissioners. Specific attention should be given to relieving the County Commission of the necessity to concern itself with routine matters which can be handled administratively.

Presently, it would appear that adherence to Commission policy is a rather haphazard occurrence. The chief problem would appear to be effective communication which guarantees employee awareness of County policy. In order to resolve this problem, steps should be taken to compile and distribute an Administrative Procedures Manual to all County department heads or supervisors. This manual should be updated on a periodic basis, and its

distribution should be combined with in-service training for supervisory personnel.

The establishment of an Executive Director's office with assigned administrative functions will make the office of County Commissioner more attractive to a broader segment of population interested in government service who are willing and able to serve but are unable to give the necessary time for administrative and legislative responsibilities.

The principle of "unity of command" is not observed in County operations. It is a common occurrence that County department heads and subordinates are subject to orders from both the County Executive Director and individual members of the Board of County Commissioners. It is not unusual that subordinates are subject to conflicting orders which play havoc with work schedules and subject County personnel to unreasonable and unnecessary pressures.

There is an old saying. "A man cannot serve two masters," which is known in public administration as the principle of "unity of command." A subordinate who is subject to orders from several superiors will be inefficient, confused, and, ultimately, irresponsible.

A vast majority of local governments operate with governing bodies whose responsibilities are legislative in nature, i.e., enacting laws and establishing administrative policies.

The functions and responsibilities of the County Department of Human Resources and the Community Action Program provides various social services with emphasis on meeting the needs of disadvantaged residents. The services provided by these two agencies should be con-

solidated in a single county department so as to eliminate the overlapping responsibilities.

### **Budgets**

*The annual budget is first and foremost a planning and policy statement. An appropriations process is one of the most basic and important functions of a legislative body and, therefore, deserves special attention to insure that the legislative body retains control of that process. Responsibility for budget formulation and implementation should be delegated to the Executive Director's office, who has the responsibility of providing the Commission with information regarding the fiscal impact of the continuation of existing programs and initiation of new programs.*

Currently, in Escambia County, responsibility for budget formulation, adoption and implementation is shared between the Board of County Commissioners, the elected County Comptroller, and the State. As a result, the Board of County Commissioners does not have full control of one of its most important functions. Additionally, there are other elected officials who have the statutory right to seek amendment of the annual budget through direct appeal to the State. Therefore, the County Commission, which has the legal responsibility and the political liability for raising taxes, does not exercise control over activities which generate demands for local revenues.

### **Auditing**

In order to maintain the fiscal integrity of the system and the confidence of the people who ultimately support local government through their taxes, responsibility for pre-audit and post-audit of expenditures should remain under an independent elected official who is isolated from political pressures by the Board of County Commis-

sioners. It is important that the people of the community have confidence in the financial integrity of the system. This principle is consistent with sound government financial practices and is utilized by a majority of state governments, large municipalities, and urban counties.

### **Non-Profit Public Agencies**

Require all non-profit public agencies supported by any form of local tax monies or fees for service to file with the Board of County Commissioners a monthly activity report, and on or before September 30 of each year, file with the Board of County Commissioners a balance sheet and statement of operations for the ensuing year, showing all assets, liabilities, and equities' income and expenditures of the respective agency. They should also be required to file a list of employee complement and their salaries, and should any agency fail to comply with these provisions, the Board of County Commissioners should withhold releases of appropriations until such time as the agency is in compliance.

Very often private non-profit public agencies are in a position to administer programs more efficiently than a local unit of government. When the Board of County Commissioners assumes direct responsibility for the operation of a given program, there occurs substantial overhead cost in the form of fringe benefits, Civil Service, and other requirements imposed by law. Additionally, agencies receive support from both the City of Pensacola and the Board of County Commissioners. If the County were to assume direct responsibility for the operation, it is doubtful that the City would continue to fund the operations of a County department. Through joint funding, the City and the County have been able to initiate and support many health and social service programs at a minimal cost.

### **County-State-Federal Connections.**

Few citizens are aware of the County's ties to the state and federal government, the limitations of County powers, and the connection between these and the inability of the County to respond to local problems. The demand for additional public services by the people, politics, inflation, and legislative acts (federal and state) have played a substantial part in local governmental growth and the increased expenditure of tax monies. However, due to the mandated nature of many of the programs by state and federal government, efforts to control this expansion at the County level have not been satisfactory.

Federal and state aid is another means of federal and state influence over counties. To receive this aid, in most instances, counties must meet certain standards or comply with certain regulations. While many of these requirements have helped raise standards in County administration, others have unduly restricted County discretion.

State and federal aid has been invaluable to counties in meeting rising cost; however, it can distort expenditure patterns by encouraging counties to expend funds in one administrative area to match grant monies, while reducing expenditures for other needed functions which do not receive grant funds.

### **Government Cost Stabilization**

Escambia County has just about exhausted all of their immediate options in trying to cope with the flood tide of local problems. The reason is simple — we have run out of tax dollars. There is little or no potentially new revenue available to us in the foreseeable future; therefore, the need to stabilize cost and improve productivity in local



government is an issue of concern to all citizens. Perhaps one of the first places to start is the identification of priorities in clear, precise terms so that the citizens may understand their need to respond, and so that we may allocate our inadequate resources better.

### **Revitalization of County Government**

Our changing society requires counties to provide new and improved services and perform new functions; therefore, we must find some way to revitalize local self-government, and we must also find some method to allow County government more flexibility of form, function, and finance. Modernizing County government is perhaps the most pressing need for action.

The average citizen feels no impelling need, no urgency for any major restructure of the governmental pattern. Perhaps the basic reason is their lack of awareness for the need for change and the lack of knowledge of the present structure.

There has been a substantial growth in the expenditure of monies and employees in the past few years; therefore, the public is showing a renewed interest in taxes, governmental cost, and productivity levels of state and local governments.

Regardless of the future, we need priorities so as to allocate our inadequate resources better. Perhaps most important of all, extension of the principle of home rule should lead to the revitalization of local self-government that would help roll back the increasing concentration of power in the state and federal government.



**Intergovernmental Agreements**

We recommend that the Board of County Commissioners utilize corporate intergovernmental agreements, where appropriate, to attain economical performance of needed services.

**Personnel — Civil Service**

The authority of the Civil Service Board to set salaries for classified positions should be removed and placed in a Department of Personnel with responsibility for all personnel policies.

The Civil Service Board should have the authority to adopt, amend, and enforce a code of regulations providing for examination, appointment, employment, promotion, standards, of conduct, and efficiency of employees in the classified service, and they should be the sole authority vested with the power to approve, confirm or deny disciplinary action against an employee within the classified service.

**Charter Government**

Charter provisions should maintain all constitutional elective County officers so as to insure accessibility and effectively pinpoint accountability to the voter.

A Charter is nothing more and nothing less than a constitution or contract between the people and their government. A charter delineates the duties and responsibilities of government, and it delineates the rights and privileges of the people. We therefore recommend that the people be given an opportunity to vote on Charter government in accordance with the constitution and state statutes.

**NOTES**

**EXHIBIT 99****Recommendations by Minority of  
Charter Commission Appointed in 1975**

Mr. Kenneth Kelson, Chairman  
Mr. Zearl Lancaster, Vice Chairman  
Mr. Jack Kenney  
Mr. Marvin G. Beck  
Mr. Charles Deese, Jr.  
County Courthouse  
Pensacola, Florida 32501

Gentlemen:

We the undersigned, have studied carefully all of the material presented to us during the past year and a half, including a very careful study and restudy of the proposed charter. We have raised objections from time to time to various sections and, while some of the most inappropriate parts of the proposed charter might be changed, we believe that to submit a Charter Government to the people by referendum at this time would be a grave mistake.

In the first place, a Charter Government, as considered and discussed by us in the last year and a half, would materially increase the cost of our County Government and would tend to complicate its operation and most important of all, it would remove the checks and balances which now prevail.

The County Seal, and with it the authority which now rests with the County Comptroller, an elected official, would be passed on to the County Administrator, who would be hired by the Board of County Commissioners, who in turn could be fired by the Board of County Commissioners. This would obviously place in the hands of the Board of County Commissioners the power of Legislation, Administration and Judiciary.

Section 105 of the proposed charter provides that the

County shall have the authority to assume and perform all functions:

"The County shall have the authority to assume and perform all functions and obligations now or hereinafter performed by any municipality, special district or agency whenever such municipality, special district or agency shall request the performance of transfer of the functions to the County".

We feel that this would be a means of obtaining consolidated Government without a referendum.

In lieu of recommending a charter to you, we respectfully recommend your careful consideration of the following changes which we believe will improve our Government and bring your offices closer to the people whom you serve.

1. Election of County Commissioners (a total of five) shall be by districts and on a non-partisan basis.
2. The Commissioners, in order to justify their cost to the tax-payers, shall remain on a full-time basis.
3. The salaries of the Commissioners shall remain set by Legislation.
4. The question of whom shall be bonded and the amounts of bonds shall be provided by Legislation.
5. Your special consideration is respectfully recommended to the organizational chart. We believe that this chart can be improved and should be completely revamped.
6. We recommend that your Honorable Board should interview the heads of all departments of the County and the heads of all agencies, both State and Federal (whether contributed to by County funds or not), to determine where overlapping and unnecessary opera-

tion occurs. This should enable you to reduce costs and eliminate waste.

7. We understand that the Board of Trustees has a Task Force Committee which has been appointed to study the operation of the University Hospital. We are confident that this well qualified Committee will discover any economies which can be effected and that the high caliber people on the present Board of Trustees and Administration will be eager to reduce cost wherever possible without reducing necessary service.

We have tried to cover these recommendations as briefly as possible; However, we would be pleased to discuss this matter with your Honorable Board. If we have omitted anything about which you have questions, we will be happy to discuss this matter with your Honorable Board at your convenience.

Respectfully yours,

/s/ H. A. Brosnaham, Jr.

/s/ Adrian Blanton

CC: Mr. Billy Tenant  
County Health Department

**EXHIBIT 100**

**Proposal of Charter Commission Appointed in 1977**

**CHARTER GOVERNMENT  
STUDY COMMITTEE  
REPORT**

**AMERICAN REVOLUTION BICENTENNIAL  
1776-1976**

**ESCAMBIA COUNTY, FLORIDA  
1975-1976**

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PROPOSED  
ESCAMBIA COUNTY CHARTER

PREAMBLE

*We, the people of Escambia County, Florida, join together, under God, in the belief that County government shall be responsive to the people of the County and shall serve the people in a manner of efficiency and accountability, with equal benefits for all cities; do in accordance with the Constitution and Laws of State of Florida, ordain and establish as our Charter and form of government this Charter of Escambia County, Florida.*

ARTICLE I

POWERS OF GOVERNMENT

SECTION 101. BODY CORPORATE AND  
POLITIC.

Escambia County shall be a Body Corporate and Politic, and as such shall have all rights and powers of local self-government, which are now, or hereinafter may be, provided by the Constitution and Laws of Florida, and this Charter.

SECTION 102. NAME AND BOUNDARIES.

The corporate name of this County government shall be "Escambia County," hereinafter referred to as the "County," and shall be so designated in all actions and proceedings concerning its rights, powers, properties, and duties. Its seat shall be within Pensacola, Florida, and boundaries of the County shall be those designated by law.

SECTION 103. GENERAL POWERS OF THE  
COUNTY.

The County, shall have all powers and duties of local self-government not inconsistent with general law, or with special law approved by vote of the electors.

#### SECTION 104. SPECIAL POWERS.

The County shall have all special powers and duties which are not inconsistent with this Charter, heretofore granted by law to the Board of County Commissioners.

#### SECTION 105. CONSOLIDATION OF GOVERNMENTS.

Notwithstanding any provision herein, this Charter shall not be deemed to authorize or permit (1) the consolidation of the government of Escambia County and any municipality therein and the County shall not consolidate its government with any municipality therein, except pursuant to an election held under a special law specifically providing for such an election, which shall provide that no consolidation shall be effected unless (a) the qualified electors residing within any municipality concerned participate in the election and a majority of the participants vote in favor of consolidation; and (b) unless the qualified electors residing without the corporate limits of the city concerned participate in the election and unless a majority of such participants in both areas shall vote in favor of consolidation.

#### SECTION 106. DIVISION OF POWERS.

This Charter hereby establishes separation between the legislative, administrative, and judicial functions of this government; the establishment and adoption of policy shall be the responsibility of the Legislative Branch and the execution of that policy shall be the responsibility of the Administrative Branch.

#### SECTION 107. EXERCISE OF POWERS.

All powers of the County shall be executed as provided by this Charter or, if the Charter makes no provisions, as

provided by ordinance or resolution of the Board of County Commission.

#### **SECTION 108. SECURITY OF THE CITIZENS' RIGHTS.**

In order to secure to the citizens of the County protection against abuses and encroachments, the County shall use its powers to prevent by ordinance or by legal process, whenever appropriate, in securing for all citizens:

A. Just and Equitable Taxation: The County shall prevent the imposition of any tax within the County in excess of the limitation imposed by Article VII, Section 9, of the Florida Constitution, or by the Laws of Florida;

B. Proper Use of Public Property: The County shall prevent the use of public property, taxes, or taxing power for the benefit of private individuals, partnerships, or corporations in violation of the restrictions imposed by Article VII, Section 10, of the Florida Constitution, or by the Laws of Florida;

C. Full Disclosure of Public Record and Proceedings: All meetings and proceedings established by the County shall be open to the public in compliance with the Laws of Florida. All official acts, documents, and financial reports, except those which have been specifically prepared for use in court proceedings, criminal and law enforcement files, those which would invade a person's right of privacy, shall be open for public inspection, and the agency having custody and control of public records shall, upon request, supply certified copies of the records requested for a reasonable fee as established by ordinance; and

D. Protection of Human Rights: The County shall establish provisions, pursuant to state and federal law, for



protection of citizen human rights from discrimination based upon religion, political affiliation, race, color, age, sex, or national origin by providing and insuring equal rights and opportunities for all citizens of Escambia County.

#### SECTION 109. ORDINANCE SUPERIORITY.

Where a municipal ordinance conflicts with a County ordinance, the municipal ordinance shall prevail within the municipality to the extent of such conflict, otherwise a County ordinance shall be effective Countywide.

#### SECTION 110. CONSTRUCTION.

Escambia County shall have all power possible for a County to have under the Constitution and Laws of Florida. These powers shall include, but shall not be restricted to or by, the following: all powers now or hereafter given by the Constitution or other laws, and all other powers not prohibited by such Constitution or by this Charter to Escambia County or its departments, offices, or agencies, or to counties or County departments, offices or agencies; and all powers necessary and proper to carry into execution other powers of Escambia County. The County shall have all such powers as fully and completely as though they were specifically enumerated in this Charter, and no enumeration of powers in this Charter shall be deemed exclusive or restrictive.

#### SECTION 111. SEVERABILITY.

If any article, section, subsection, sentence, clause of provision of this Charter or the application thereof shall be held invalid for any reason, the remainder of the Charter and of any ordinances, regulations or resolutions made thereunder shall remain in full force and effect.

## ARTICLE II

## LEGISLATIVE BRANCH: COUNTY COMMISSION

## SECTION 201. COMPOSITION.

The legislative power of the County shall be vested in the Escambia County Commission, hereinafter referred to as the "Commission." There shall be five (5) Commission districts and one (1) Commission member shall be elected from each district by voters of that district.

## SECTION 202. TERMS OF OFFICE.

All County Commissioners shall be elected on a nonpartisan basis for staggered terms of four (4) years, except as provided for in this section. The Commission members elected from a district shall be elected for a term of four (4) years, and be limited to three (3) consecutive terms.

## SECTION 203. CONTINUANCE OF COMMISSIONERS.

The Commission members in office on the effective date of this Charter shall continue in office as the Commissioner from the district from which he qualified until the normal expiration of their term, or until the election and qualification of their successors.

## SECTION 204. APPORTIONMENT.

The Commission shall divide the County into five (5) districts of contiguous territory as nearly equal in population as practicable after each decennial census.

## SECTION 205. COMPENSATION.

Commissioners' salaries shall be as established by general law. Commissioners shall not be reimbursed for

expenses other than those specifically approved by the Commission. Commissioners shall receive reimbursement for their actual and necessary expenses incurred in the performance of their official duties as provided by general law.

#### SECTION 206. QUALIFICATIONS.

Commissioners shall be qualified electors of the County and shall have been a resident of the County for one (1) year immediately preceding the date on which they qualify to run for office and shall have resided within the district from which they are elected for at least six (6) months prior to the date on which they qualify to run for office. Any Commissioner who changes residence from the County, and any Commissioner elected within a district who changes residence from the district from which the Commissioner was elected, shall be deemed to have vacated his office.

If a Commissioner ceases to be a qualified elector of the County or is convicted of a crime involving moral turpitude, he shall be deemed to have vacated his office. The Commission shall have power to subpoena witnesses, take testimony, and require the production of records. Decisions made by the Commission in the exercise of powers granted by this section shall be subject to review by the courts.

#### SECTION 207. VACANCIES.

A vacancy in any Commissioner's office or other elected County official shall be filled in accordance with general law.

## SECTION 208. SUSPENSIONS.

Suspensions from office of any County elected official shall be for cause and shall be in accordance with the Constitution and Laws of Florida.

## SECTION 209. POWERS AND DUTIES OF THE COMMISSION.

The Commission shall be the legislative and policy-determining body of the County. Except as otherwise provided by the Constitution of the State of Florida, or by this Charter, the Commission shall have all powers of the County. Without limitation to the foregoing grant and without limitation to the other powers given it by this Charter, the Commission shall have the power to:

(1) Appoint by a majority vote of the full Commission and to remove by a majority vote of the full Commission the County Manager; members of appointed County boards, commissions and advisory groups, except as otherwise provided for in this Charter;

(2) Elect from among its members a Chairperson and a Chairperson Pro Tem. The Chairperson shall preside at Commission meetings. If at any meeting the Chairperson is not present or is unable to act, the Chairperson Pro Tem shall preside. The Chairperson and the Chairperson Pro Tem shall be elected annually prior to December 1, and shall take office on the first Thursday of January of each year;

(3) Advise and consent to all appointments by the County Manager for which Commission confirmation is specified under this Charter;

(4) Adopt or enact, in accordance with the procedures provided by general law, ordinances and resolu-

tions it deems necessary and proper for the good governance of the County;

(5) Appoint a clerk to the Commission who shall serve at its pleasure and keep the records and minutes of the Commission;

(6) Adopt and amend the Administrative Code to govern the operation of the County;

(7) Provide for an independent audit of County finances;

(8) Fix and amend Commission districts so as to be nearly equal in population as practicable;

(9) Levy taxes and special assessments and to borrow money subject to the limitations as provided by the Constitution and Laws of Florida;

(10) Review budgetary requests, and make the final determination and approve appropriations for all operations of County government, except as provided by law;

(11) Enter into bilateral and multilateral contracts with the State, other Counties and with governmental units within or contiguous to the boundaries of the County for joint performance, or for performance by one governmental unit in behalf of the other or others of any function or activities which the County is authorized to perform;

(12) Make the investigations of the affairs of the County and to make inquiries into the conduct of any County employee, department, office, or agency;

(13) Make appropriations for County purposes;

(14) Adopt rules and procedures as shall be necessary for the orderly transactions of the business of the Commission;

(15) It shall be the duty of the Commission to directly accept or reject all loans and grants of the State and federal government, or modifications thereto.

(16) Designate which department heads and employees shall be bonded and fix the amount and form of such bonds; and

(17) Require periodic and special reports concerning functions of any County department, office, or agency receiving County funds. Such reports, in the case of departments, offices, or agencies, subject to the direction and supervision of the County Manager, shall be submitted through the County Manager.

#### SECTION 210. POWERS AND DUTIES OF THE CHAIRPERSON OF THE COMMISSION.

The Chairperson shall serve as the chief officer of the legislative branch of the County government and shall devote such time as is necessary to perform the duties of the office. The Chairperson, in addition to the powers and duties provided elsewhere in this Charter, shall have the specific powers and duties to:

(1) Serve as the legislative leader and presiding officer of the Commission;

(2) Present annually in January of each year a "State of the County" message, setting forth programs and recommendations to the Commission;

(3) Nominate, subject to the confirmation by a majority vote of all members of the Commission, members of all appointed County boards, commissions, and advisory groups;

(4) Call all regular and special meetings of the Commission;

(5) Promote the welfare and best interest of the citizens of Escambia County by presenting from time to time policy recommendations to the Commission; and

(6) Serve as the official representative and ceremonial dignitary for the government of Escambia County.

#### SECTION 211. PROCEDURE: MEETINGS; RULES AND JOURNAL; VOTING.

A. The Commission shall meet regularly, at least twice in every month, at such times and places as the Commission may prescribe by rule. Special meetings may be held on the call of the Chairperson, or in his absence, the Chairperson Pro Tem, or of two (2) or more members and, whenever practicable, upon no less than twelve (12) hours effective notice to each member. All meetings of the Commission shall be public, as required by general law; and

B. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. A majority of the members of the Commission shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Commission.

#### SECTION 212. COUNTY ORDINANCES AND RESOLUTIONS.

Every County ordinance and resolution shall be introduced and approved in accordance with the Constitution and Laws of Florida.

### SECTION 213. RECORDING, PRINTING AND CODIFICATION

The Commission shall provide for the authentication and recording in full, in a properly indexed book kept for the purpose, of all minutes of meetings, ordinances and resolutions adopted by the Commission and the same shall, at all times, be a public record. The Commission, with the advice and assistance of the Director of Law, shall cause each ordinance and resolution have the force and effect of law and each amendment to this Charter to be printed as promptly as possible following its adoption; and the printed ordinance, resolutions and Charter amendments shall be sold to the public at prices consistent with general law. The Commission shall further maintain a codification of all ordinances. Such codification shall be published and made available for distribution on a continuing basis at prices consistent with general law.

### SECTION 214. RESTRICTIONS ON ELECTED OFFICIALS AND COMMISSION.

Neither the Commission nor any of its members shall in any manner direct the appointment or removal of any County employee. Except for the purpose of inquiries under Section 209 of this Article, the Commission or members, in dealing with County employees who are subject to the direction and supervision of the County Manager, shall deal solely through the County Manager, and neither the Commission nor its members shall give orders to any such employee, either publicly or private. No person elected or member of the Commission shall be appointed to any paid County administrative office or paid County position during the period beginning on the date of his election and ending not less than one (1) year after the expiration of term for which he was elected.



## ARTICLE III

## ADMINISTRATIVE BRANCH: COUNTY MANAGER

## SECTION 301. COUNTY MANAGER.

There shall be a County Manager, hereinafter referred to as the "County Manager," who shall be appointed by a majority vote of all members of the Commission, for an indefinite term. The County Manager shall serve at the pleasure of the Commission, and he may be removed at any time by a majority vote of all of its members. At least thirty (30) days before such removal is to become effective, the Commission shall furnish the County Manager with a written statement setting forth its intention to remove him. In the event such a removal for any reason other than a conviction of a felony or malfeasance in office, he shall be granted two (2) months' termination pay.

## SECTION 302. QUALIFICATIONS.

The County Manager shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office, as herein outlined. The County Manager need not be a resident of Escambia County or of the State of Florida at the time of his appointment, but during the tenure of his office, he shall, within sixty (60) days, establish residence within Escambia County.

## SECTION 303. VACANCY.

When a vacancy occurs in the office of the County Manager, the Commission may designate one (1) qualified staff member to perform the duties of the County Manager for a period not to exceed sixty (60) days.

**SECTION 304. BOND: COUNTY MANAGER.**

Before entering upon his duties, the County Manager shall give a bond to the Commission with a bonding company as surety, conditioned upon the faithful performance of his duties, to be approved by the Commission. The premium for said bond shall be paid by the County.

**SECTION 305. SALARY: COUNTY MANAGER.**

The salary of the County Manager shall be fixed annually by contract.

**SECTION 306. POWERS AND DUTIES OF COUNTY MANAGER.**

The County Manager shall be chief administrative officer of the County, and he shall be responsible to the Commission as a whole for the proper administration of the affairs of the County, except as otherwise provided by the Constitution and the Laws of Florida, or by this Charter.

The powers and duties of the County Manager shall include the following:

(1) Administer and carry out the directives and policies of the Board of County Commissioners and enforce all orders, resolutions, ordinances and regulations of the Board, the County Charter, and all applicable general law, to assure that they are faithfully executed;

(2) Supervise the care and custody of all County property, institutions and agencies;

(3) He shall employ, and when necessary for the good of the County, shall suspend, discipline or discharge, in accordance with the Civil Service System, any employee under his supervision, provided that the County Manager

shall report, at the next meeting hereafter of the Commission, any action taken by authority of this subsection;

(4) He shall submit annually to the Commission, a budget for the next fiscal year. The County Manager shall be responsible for the administration of the budget after its adoption by the Commission;

(5) He shall, in conjunction with the preparation of the annual budget, develop long-range fiscal plans for the County, such plans to be presented, as necessary, to the Commission for its review and adoption;

(6) Negotiate contracts, bonds or other instruments for the County, subject to Board approval; make recommendations concerning the nature and location of County improvements; and executive services determined by the Board;

(7) He shall hold such other County offices and head such other County departments as the Commission may from time to time direct;

(8) He shall attend all meetings of the Commission, with a right to take part in the discussions;

(9) He shall prepare the agenda for each regular or special meeting and committee meetings of the Commission and shall supply facts pertinent thereto;

(10) He shall review, analyze and forecast trends of County services, finances and programs of all County departments and agencies receiving County funds; keep the Commission informed as to the conduct of County affairs and submit such other reports as the Commission requests;

(11) Assure that all terms and conditions imposed in favor of the County or its inhabitants in any statute, franchise, or other contract are faithfully kept and performed;

(12) He shall coordinate all funding programs of all other governmental units or agencies with the County government; and

(13) The County Manager shall submit to the Commission at the end of the fiscal year a complete report on the finances and administrative activities of the County for the preceding year and prepare and make available for distribution to the public, within three (3) months after the end of the fiscal year, an annual report on County affairs during that fiscal year.

#### SECTION 307. ADMINISTRATIVE CODE: INITIAL.

The County Manager shall prepare an initial Administrative Code which shall set forth departmental organization of County government and the nature and scope of each department, together with all required rules and procedures for the operation of said departments, and a comprehensive budget procedure. Such Administrative Code shall, within nine (9) months after adoption of this Charter, be submitted to the Commission for review, amendment and adoption. The Commission shall adopt the Administrative Code as submitted or amended within three (3) months of the date submitted. If not adopted within three (3) months, the Administrative Code, as originally prepared by the County Manager, shall be considered approved and shall remain in force until such time as it may be formally amended by the Commission. The County Manager may, from time to time, submit any changes in any or all department organizations, including combinations, deletions and creations of departments or divisions, and transfer of responsibilities between departments or divisions to the Commission for review, amendment or adoption.

**SECTION 308. TEMPORARY ABSENCE.**

Should the County Manager become ill or need to be absent from the County, he may designate one (1) qualified member of his staff to temporarily perform the duties of the County Manager during his absence or disability. However, the person so designated shall not perform those duties for a period longer than fifteen (15) calendar days without the approval of the Commission.

**ARTICLE IV****ADMINISTRATIVE BRANCH: ADMINISTRATIVE ORGANIZATION.****SECTION 401. GENERAL PROVISIONS.**

A. Except as provided by this Charter, the activities under the direction and supervision of the County Manager shall be distributed among such departments, offices and agencies as are established by this Charter, or may be established, merged or abolished thereunder by the Administrative Code.

B. Except as provided by this Charter, each department shall be administered by an individual appointed by and subject under this Charter to the direction and supervision of the County Manager. With the consent of the Commission, the County Manager may serve as the head of one or more such departments, and with Commission approval, may appoint one person as head of two or more such departments.

C. The department heads shall be appointed with the advice and consent of the Commission and shall serve at the pleasure of the County Manager, except as otherwise provided for in this Charter.

D. The department heads shall be chosen solely on the

basis of their qualifications, executive and administrative abilities, with special reference to the duties of the office. Department heads and County employees shall not be employed or receive compensation from more than one appointing authority.

#### SECTION 402. DEPARTMENTAL STRUCTURE.

The departmental organization of County government and the nature and scope of each department, together with all the required rules and procedures for the operation of said department, shall be set forth in the Administrative Code. The Administrative Code shall be adopted by and may be amended by the Commission. The County Manager shall, from time to time make recommendations as to the promulgation, adoption and amendment of the Administrative Code.

#### SECTION 403. INITIAL DEPARTMENTS AND OFFICES.

The following initial departments and offices are hereby established under this Charter until amended or abolished under the Administrative Code:

- (1) Department of Finance.
- (2) Department of Personnel.
- (3) Department of Public Works.
- (4) Department of Public Safety.
- (5) Department of Community Services.
- (6) Department of General Services.

#### SECTION 404. DEPARTMENT OF FINANCE.

There shall be a Department of Finance headed by a Director of Finance. The Director of Finance shall, sub-

ject to the direction of the County Manager, be responsible for the preliminary preparation of the County budget as provided by the Laws of Florida, and shall be responsible for the Administration of such duties as may be assigned under the Administrative Code and this Charter. The following duties are hereby specifically imposed under the Director of Finance:

(1) Maintaining the budget records of the Commission and County departments established under this Charter.

(2) Maintaining inventories and records of County property and equipment as required by laws.

(3) Supervision of central purchasing for the County.

(4) Devise a records system for maintaining inventories of fuels, equipment, supplies and the distribution thereof.

#### SECTION 405. DEPARTMENT OF PERSONNEL.

There shall be a Department of Personnel, headed by a Director of Personnel. The Director of Personnel shall be responsible for preparing and recommending County personnel policy for all County departments, officers and agencies, including classification of positions, pay and benefit plans, and the maintenance of a roster of all employees, their classification and pay scale.

#### SECTION 406. ESTABLISHMENT OF A CIVIL SERVICE SYSTEM.

There is hereby created a Civil Service System for all classified employees of Escambia County to which system all employees of the County who are now members of any or the present existing Civil Service System of the County, established under the Laws of Florida, shall be and are hereby declared to be automatically members of the Civil

Service System of the County upon the effective date of this Charter.

#### SECTION 407. CIVIL SERVICE BOARD.

A. There is hereby created a Civil Service Board which shall consist of five (5) members; one (1) shall be elected by the legislative body of the County, being the Commission of the County, and one (1) shall be elected by the School Board; one (1) shall be elected by the elected constitutional County officers, and one (1) shall be elected by the employees of the County who are members of the classified service. The fifth member shall be named by the other four members. In the event said members cannot agree upon the fifth member within fifteen (15) days after said members take office, the chief judge of the Circuit Court shall designate such member; the Board shall elect one of their members to be Chairperson, and one member to be Vice-Chairperson. Members shall receive no salary but shall be reimbursed for expenses incurred in the discharge of their official duties in accordance with Chapter 112.061, Florida Statutes.

B. The Civil Service Board of Escambia County is authorized to employ a competent secretary, legal counsel, and other additional help to carry out their duties under this Charter.

C. The initial appointments to the Civil Service Board by the County employees, School Board and Constitutional Officers shall be for a period of four (4) years; initial appointments by the Commission and the member elected by the other four members shall be for a period of two (2) years. Thereafter, the members of the Civil Service Board shall be selected for staggered terms of four (4) years.



D. Each appointing authority shall be authorized, empowered, and required to elect an alternate to the Civil Service Board who shall serve in the event the member so elected shall not be able to serve.

#### **SECTION 408. QUALIFICATIONS AND ELECTIONS: CIVIL SERVICE BOARD.**

A. Any qualified voter residing in Escambia County is eligible to be a member of the Civil Service Board, provided, however, that no person convicted of a crime involving moral turpitude, or who is an officer or employee of the County shall be eligible to hold office as a member of the Civil Service Board.

B. Any member of the Civil Service Board may be disqualified to hear and determine any cause if there exists any ground which under the Laws of the State of Florida would disqualify the judge of any court or which is ground of challenge for cause to any juror.

C. The first election of the Civil Service Board members under this Charter shall be held not more than ninety (90) days after the effective date of this Charter. The Civil Service Board elected herein provided shall take office within ten (10) days after election or appointment. The oath of office shall be administered to each of the Civil Service Board members by the Chairperson of the Commission.

#### **SECTION 409. MEETINGS OF THE CIVIL SERVICE BOARD.**

The Civil Service Board shall hold not less than one (1) regular meeting each month, and may hold special meetings when required for the transaction of business by the Board. Such meetings may be called by any two members

of the Board of Secretary to the Board. Three (3) members shall constitute a quorum.

#### **SECTION 410. CLASSIFIED AND UNCLASSIFIED SERVICES.**

A. County personnel is hereby divided into "classified service" and "unclassified service" as provided by the Escambia County Civil Service Act of 1977.

B. All heads of departments created under Section 403 of this Charter or subsequently created by the Administrative Code shall be within the unclassified services.

C. The Civil Service Board shall adopt, amend and enforce a code of rules and regulations providing for examination, appointment, employment, promotion, standards of conduct and efficiency of employees in the classified service.

D. The Civil Service Board shall be the sole authority vested with the power to approve and confirm or deny disciplinary action against any employee within the classified service.

#### **SECTION 411. TRANSFER OF POWER.**

Upon the effective date of this Charter, the Civil Service Board of Escambia county, as created by the Escambia County Civil Service Act of 1977, shall cease to exist.

#### **SECTION 412. EXISTING CIVIL SERVICE BOARD MEMBERS.**

The members of the Escambia County Civil Service Board created by the Escambia County Civil Service Act of 1977 and existing on the effective date of this act shall serve as temporary members of the Civil Service Board as

created under Section 407 of this Charter until the regular members of said board are selected and qualified as provided herein. Except where inconsistent with this Charter the provisions of the Escambia County Civil Service Act of 1977, and rules dopted thereunder, shall remain in full force and effect.

#### **SECTION 413. INDEPENDENT NATURE OF BOARD.**

The Civil Service Board shall be independent of all members of administrative service of the County and shall conduct all hearings, trials, and proceedings of every character in an impartial, just manner, designed to promote justice and efficiency.

#### **SECTION 414. APPOINTMENT: DIRECTOR OF PERSONNEL.**

The Director of the Department of Personnel shall be appointed by the County Manager with the advice and consent of a majority of the Commission.

#### **SECTION 415. ANNUAL REPORT.**

The County Manager shall report annually in written form to the Commission concerning the administrative needs of the Service, the personnel and positions in the County, and the compensation provided therefor, the examinations held by the Board, the appointments made, service ratings and removals in the Civil Service, the operation of the rules of the Civil Service Board, and recommendations for promoting efficiency and economy in the Service, with details of expenditure and progress of work.

## SECTION 416. DIRECTOR OF LAW: QUALIFICATIONS AND DUTIES.

The Director of Law shall be an attorney at law who shall have practiced in the State of Florida for at least two (2) years or who has had an equivalent combination of education and experience concentrated in municipal or county government law. He shall be appointed by and serve at the pleasure of the Commission. The Director of Law shall be the chief legal advisor of and attorney for the Commission and all departments and offices thereof in matters relating to their official powers and duties, except as otherwise provided by this Charter. It shall be his duty, either personally or by such assistants as he may designate, to perform all services incident to the Department of Law; to attend all meetings of the Commission; to give advice in writing, when so requested, to the Commission, the County Manager, or the director of any department; to prosecute or defend, as the case may be, all cases to which the County may be a party; to prepare or review all contracts, bonds and other instruments in writing in which the County is concerned, and to endorse on each his approval of the form and the correctness thereof; and to perform such other duties of a legal nature as the Commission may by ordinance or resolution require. In addition to the duties imposed upon the Director of Law by this Charter or required of him by ordinance or resolution of the Commission, he shall perform any duties imposed upon the chief legal officers of counties by law.

## ARTICLE V

### ELECTED COUNTY OFFICERS CONTINUED

#### SECTION 501. COMPTROLLER.

The Comptroller shall perform all duties of the office of Comptroller, as provided by law, except to the extent in-

consistent with this Charter. The Comptroller shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

#### SECTION 502. PROPERTY APPRAISER.

The office of Property Appraiser shall continue, and all laws applicable thereto shall continue at full force and effect. The Property Appraiser shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

#### SECTION 503. SHERIFF.

The constitutional office of Sheriff shall continue, and all laws applicable thereto shall continue at full force and effect. The Sheriff shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

#### SECTION 504. SUPERVISOR OF ELECTIONS.

The constitutional office of Supervisor of Elections shall continue, and all laws applicable thereto shall continue at full force and effect. The Supervisor of Elections shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

#### SECTION 505. TAX COLLECTOR.

The constitutional office of Tax Collector shall continue, and all laws applicable thereto shall continue at full force and effect. The Tax Collector shall qualify, be nominated, elected and serve as provided by the Constitution and Laws of Florida.

## ARTICLE VI

## JUDICIAL SYSTEM

## SECTION 601. JUDICIAL SYSTEM

The judicial system of the Charter government shall be as provided by the Constitution and Laws of Florida.

## SECTION 602. JUDICIAL OFFICES.

The office of the Clerk of Circuit Court, judges of the County Court, and all other offices of the various courts of the County shall continue, and all laws applicable thereto shall continue at full force and effect. The Clerk of Circuit Court shall qualify, be nominated, elected and serve as is provided by the Constitution and Laws of Florida.

## ARTICLE VII

## FINANCIAL PROCEDURES

## SECTION 701. FISCAL YEAR.

The fiscal year of the Charter government shall be in accordance with general law.

## SECTION 702. UNIFORM BUDGETARY SYSTEM.

All County operations shall utilize a unified and uniform budget system as provided by the State Comptroller. All fees collected by officers and employees of the County shall be deposited in the appropriate County fund as provided by law. The head of each County department, elected County official, office or agency receiving County monies, shall furnish the County Manager a detailed budget as may be required for the ensuing year's opera-

tion, a capital program, and such additional information as may be required by the County Manager or the Commission prior to June 1 of each year. On or before the first day of July of each year, the Director of the Department of Finance shall determine the estimated revenues of the County and, under the supervision of the County Manager, shall prepare a tentative budget with the comparative analysis from past years.

#### SECTION 703. BUDGET REVIEW.

Prior to August 15 of each year, the County Commission shall review the tentative budget and capital program as submitted by the County Manager, together with the County Manager's recommendations and the original budget request of any elected County official, and shall make such additions, deletions or changes as may be necessary to insure the proper funding of operations of County government. The County Commission shall take action to insure that the total budget provides sufficient funds on an annual basis for all agencies and departments to carry out their duties and functions, as provided by this Charter, the Constitution, and the Laws of Florida.

#### SECTION 704. PUBLIC HEARING.

Prior to September 15 of each year, a public hearing shall be held on the County budget and capital program. After the public hearing, the Commission may adopt the budget and capital program with or without amendment. A notice of such public hearing and a summary of the budget of each elected official, department and agency shall be published in a newspaper of general circulation in the County at least ten (10) days before the date of such hearing. Final adoption of the budget by the Commission shall be made prior to October 1 of each year.

**SECTION 705. FINANCIAL DISCLOSURE.**

Any agency or elected County officer receiving County appropriated funds shall make a complete and full disclosure of all financial operations annually, including all sources of funds, disbursements, and budget of the agency or County officer, on forms prescribed by the County Comptroller. Such financial records shall be filed with the Commission and copies of such records shall be available to any members of the public at a public location or locations designated by the Commission, or at a reasonable cost.

**SECTION 706. REQUIRED AUDIT.**

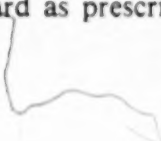
The County Comptroller shall, within six (6) months of the end of the fiscal year, complete an audit of the accounts and other evidence of financial transactions of the County and of every County department and office.

**ARTICLE VIII****ELECTIONS****SECTION 801. ELECTION PROCEDURES.**

All elections shall be held and conducted pursuant to the provisions of Article VI of the Constitution and Laws of Florida, except as otherwise provided in this Charter.

**SECTION 802. CANVASSING BOARD.**

There shall be a Canvassing Board as prescribed and designated by the Commission.





## ARTICLE IX

## MISCELLANEOUS PROVISIONS

## SECTION 901. LAWS CONTINUED.

All laws, ordinances, regulations and resolutions of the County shall remain operative except where inconsistent with this Charter.

## SECTION 902. ADMINISTRATIVE CODE.

Any Administrative Code adopted and amended shall not be inconsistent with the provisions of this Charter.

## SECTION 903. RIGHTS RESERVED.

All actions, rights of action, claims, contracts and obligations of persons, corporations, public bodies or agencies existing on the date this Charter becomes effective shall continue to be valid as if this Charter had not been adopted.

SECTION 904. PUBLIC DEBT AND BOND  
OBLIGATIONS CONTINUED AND RECOGNIZED.

All public debts, bonds, revenue certificates, revenue bonds and tax anticipation certificates heretofore incurred or issued by Escambia County shall remain valid and in full force and effect and shall be secured by the same sources of revenue as before the adoption of this Charter and to the extent necessary all ordinances, resolutions or other actions pertaining to same shall remain in full force and effect until payment in full of such public debts and securities.

**SECTION 905. PROCEEDINGS CONTINUED.**

All petitions, hearings and other proceedings pending before the former government shall remain in full force and effect as established under this Charter.

**SECTION 906. CITIZENS' ADVISORY BOARDS.**

All advisory boards existing at the date of the adoption of this Charter are hereby abolished. The Commission may create by resolution, specifying the duties and membership thereof, such advisory boards as it deems necessary. Members of such advisory boards shall be nominated by the Chairperson of the Commission, subject to confirmation by a majority vote of the full Commission.

**SECTION 907. BOARD OF TAX ADJUSTMENT.**

The Board of Tax Adjustment, as provided by the Laws of Florida, shall continue under this Charter.

**SECTION 908. PETITION AND ORDINANCE.**

The Commission may, by ordinance, or the electors of the County may, by petition signed by ten percent (10%) of the registered voters, submit to the electors of the County a proposed amendment to this Charter, which amendment may be to any part or to all of said Charter. When such change is filed with the Supervisor of Elections, it shall be submitted to the voters at an election to be held in accordance with the requirements of the Constitution and Laws of Florida, and if approved at the election, the change shall become a part of this Charter.

**SECTION 909. RECALL OF COMMISSIONERS.**

Any member of the Commission may be recalled and

removed from office in accordance with procedures established by general law.

#### **SECTION 910. NOTICE OF CHARTER AMENDMENT REFERENDUM.**

In addition to any other notice requirements provided by the Charter or general law, whenever a Charter amendment is submitted to referendum, the exact language of the proposed Charter amendment or amendments shall be published at least twice in a newspaper of general circulation in the County. One notice shall be published not more than forty-five (45) days nor less than thirty (30) days prior to the referendum election, and another notice shall be published not more than ten (10) days nor less than five (5) days prior to the referendum election.

#### **SECTION 911. CODE OF ETHICS.**

The Code of Ethics shall be the Standards of Conduct for Public Officers and Employees as provided by general law, and shall have full effect on all employees and office holders under the Charter government. Penalty for violation shall be provided by ordinance or as otherwise provided by general law.

#### **SECTION 912. PROHIBITIONS.**

No person shall be appointed to or removed from or in any way favored or discriminated against with respect to any County position or appointive County administrative office because of sex, race, creed, color, political or religious affiliations, provided however that nothing herein shall prohibit the reasonable regulation of political activity of County employees by ordinance.

ARTICLE X  
TRANSITION PROVISIONS

SECTION 1001. REFERENDUM AND BALLOT.

The election of this Charter shall be held in accordance with the requirements of the Constitution and Laws of Florida. The question on the ballot shall be as follows:

"SHALL THERE BE A HOME RULE  
CHARTER FOR ESCAMBIA COUNTY,  
FLORIDA, PROVIDING FOR THE  
RESTRUCTURING OF COUNTY GOVERN-  
MENT, WHICH SHALL TAKE EF-  
FECT\_\_\_\_\_, AS PROPOSED BY CHARTER  
DATED\_\_\_\_\_."

FOR CHARTER:

\_\_\_\_\_

AGAINST CHARTER:

\_\_\_\_\_

SECTION 1002. FORM OF NOTICE.

The form of notice of the election by which this Charter shall be submitted to referendum shall contain the complete text for this Charter.

SECTION 1003. EFFECTIVE DATE.

This Charter shall become law when approved by a majority of those electors voting on the matter in an election to be held in the County under the provisions of the Constitution and the Laws of Florida. The Charter government shall assume all powers and duties provided by this Charter on the first day of \_\_\_\_\_, the effective date of this Charter.

#### SECTION 1004. INITIAL CHARTER COUNTY MANAGER.

It shall be the obligation of the Commission to employ the initial County Manager within three (3) months of the effective date of this Charter. Pending the selection of the County Manager, the Chairperson of the Commission shall be empowered to appoint an interim County Manager with powers as may be established by the Commission.

#### SECTION 1005. DISTRICTS.

The Commission districts existing on the effective date of this Charter shall constitute the Commission districts under this Charter.

#### SECTION 1006. DEPARTMENTS CONTINUED.

Except as provided by this Charter, all County departments and agencies shall continue until reorganized in accordance with the provisions of this Charter and the Administrative Code.

#### SECTION 1007. EMPLOYEES' CONTINUATION.

All employees of the former County government shall, on the effective date of this Charter, become employees of the Charter government without loss of benefits. Salaries of all employees shall be continued at no less than the same level as on the date of the referendum approving this Charter, unless at such time as the Commission shall provide for overall adjustments for all County employees.

**DISTRICT COURT ORDER DENYING STAY OF  
DECEMBER 3, 1979 REMEDIAL ORDER**  
**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF FLORIDA  
PENSACOLA DIVISION**

---

HENRY T. McMILLAN, et al.,

Plaintiffs,

vs.

PCA 77-0432

ESCAMBIA COUNTY, FLORIDA, et al.,

Defendants

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**ORDER**

Before the court is defendants' motion for an order staying this court's order of December 3, 1979 providing for single member districts in the upcoming 1980 elections.

In argument before this court movants urged the elections be stayed completely pending further order of this court — in other words, urged that no elections at all be held in 1980, at least as scheduled.

This court would, in no event, grant that request. It would not do so for the same reasons that it denied a request to stay all elections in its order of July 11, 1978. This court may not and should not interfere with existing election processes and procedures except to the extent required to remedy unconstitutional and illegal dilution found to exist.

There remains the question whether this court should stay the effect of its December, 1979 order so that the 1980 elections may go forward under the at large system.

In *Pitcher v. Laird*, 415 F.2d 743 (5th Cir. 1969) there was developed a four part test to determine whether a stay is proper with the burden being on the movant or petitioner to show that all four conditions have been met:

- (1) A likelihood that the petitioner will prevail on the merits of the appeal;
- (2) Irreparable injury to the petitioner unless the stay is granted;
- (3) No substantial harm to other interested persons; and (4) No harm to the public interest.

On the record here, defendants may be faulted, at least to some extent, for not proceeding with diligence. They did not ask for expedited appeal of the July, 1978 decision of this court until November, 1979 — 16 months later. That decision had been certified under the statute by this court so that immediate appeal from it could be taken. In that same order this court pointed out that, while the election plan adopted or approved by it under the order would not be effective for the 1978 elections, it would be effective for the 1980 elections.

These defendants waited to seek expedited, appeal notwithstanding this court denied the motion of these and other defendants to stay all elections pending appeal by order of July 11, 1978.

There has been more delay in getting to final adoption and approvement of an election plan with the country than there was with the city. The delay resulted, in large part, because of consideration by the county of the question whether it would go forward with the adoption of a proposed charter plan. The parties and the court all agreed that since adoption of such a plan might be a factor in decision of election plan to be finally adopted or approved by the court there should be delay by this court in going

forward with such a plan. When such charter provision was rejected by the electorate of this county in November, 1979, all parties in this court were able to go forward and the result is that adoption of a plan was made in December of 1979.

To that extent defendants should not be faulted with delay. Nonetheless, it still remains that they could long earlier have sought expedited appeal of the July, 1978 decision instead of waiting until November, 1979 to do so.

Without regard to that, however, and notwithstanding, it still appears there may be time for appellate decision to be reached in order to avoid election uncertainties for the 1980 elections. As this court understands it, the Court of Appeals for the Fifth Circuit has set oral argument on the appeal on March 26, 1980. In addition to that, the Mobile cases referred to by the parties in memoranda were reargued in the Supreme Court of the United States on October 29, 1979. It seems likely that court will rule on those appeals were pending without waiting for Supreme Court decision upon them. So there is also at least the possibility that in no event will Court of Appeals for the Fifth Circuit delay its own decision in this case waiting on the decision of the Supreme Court of the United States in those cases.

In defendants' application for expedited consideration of the merits of this appeal, the defendants pointed out the qualifying date for candidates in the 1980 elections is July, 1980, and asked the appellate court to dispose of the appeal after argument, if at all possible, by July 1, 1980. Thus, it is aware of the election target dates and has granted the motion to expedite the appeal.

On the record here, it is not shown that appellate decision would not be forthcoming in time to avoid any uncer-



tainties in the scheduled 1980 elections. For that reason this court concludes that defendants have not carried the burden of showing that irreparable harm and injury will result if this motion is not granted.

Of course, Court of Appeals for the Fifth Circuit is in much better position to determine the likelihood of appellate decision in time to avoid interference with the 1980 elections than is this court. While this court considers the motion to stay should be denied by it the denial is, of course, without any prejudice to the right of these defendants to seek stay in the appellate court.

In reaching this decision this court has not overlooked the fact that in the companion case of *Jenkins v. City of Pensacola*, by order of February 21, 1979, it stayed implementation of its July 10, 1978, and December 28, 1978 orders, thereby allowing the May 9, 1979 elections to proceed under the at large system. In that case there was, to this court, no likelihood for appellate decision in time to permit the elections to proceed in accordance with the decision. In the instant case there is that likelihood.

In memorandum, and in oral argument before the court, defendants contend that certainty for the 1980 election period is needed now. They point out that a signature process under which candidates may be exempted from the qualifying fee, upon submission of petitions containing signatures of 3% of the voters, is under way with at least some candidates evidencing interest in such procedure. They also point out that a number of candidates for county commission have announced their candidacy and commenced the qualifying process under the Florida statute but are uncertain as to the area in which they must campaign or how they will be elected.

To this court such contention is not sufficient to establish irreparable harm and injury unless the stay is granted. To the contrary, depending on what results on appeal, the granting of such stay order might inject even more uncertainty than now exists.

Nor does the contention establish before this court that such uncertainty does present, in fact, serious election problems to any candidates. Surely those candidates who are now making announcements, or proceeding with electoral process, if they are serious candidates for county commission, have made themselves aware of the status of the pending litigation and have not let it deter them from going forward. This contention, at least to this court, is not sufficient to show irreparable injury.

Defendants contend before this court as a ground for granting the motion that the "purpose and effect of an electoral change to single member districts will be to vote the incumbent county commissioners out of office." That change may have the effect of voting some county commission incumbents out of office but it was not its purpose. Its purpose, as pointed out, was, in view of the findings of unconstitutional vote dilution, to set up single member districts pursuant to the requirements of appellate decisions with one of them affording at least a reasonable opportunity for the election of a black commissioner.

Beyond that, a contention that this court by order should seek to influence the election, or re-election, or the failure in election, of any particular person seeking to be elected to an office should be and is rejected by this court. No person has a vested right to be elected or re-elected to office. No order of this court should be premised in whole or in part on consideration whether it would tend to help or hinder a particular person seeking election to an office.

Before this court plaintiffs contend the situation in law is different than it was in the *City of Pensacola* case at the time this court entered its order of stay and that under intervening decisions there is even less likelihood that this court may be reversed on appeal.

Because the conclusion reached is that defendants here have not carried the burden of showing irreparable harm and injury, this court finds it unnecessary to make determination respecting this factor and the other two factors set forth in *Pitcher, supra*.

It is ORDERED that defendants' motion for stay by this court should be and the same is hereby denied.

DONE AND ORDERED this 15 day of February, 1980.

/s/ Winston E. Arnow, Chief Judge

EXCERPTS OF TRIAL TESTIMONY\*  
OF DR. GLENN DAVID CURRY

[251] Dr. Glenn David Curry. His address is in Mobile, Alabama. He was born in 1948 in West Virginia. He served in the United States Army as a captain in Viet Nam. His education includes bachelor of science in sociology from the University of Southern Mississippi, master's of sociology at the University of Mississippi, a P.h.D. in sociology from the University of Chicago. He has extensive research experience with some of the top sociologists in the country, including Dr. James S. Coleman. His teaching experience includes his present position, which is assistant professor of sociology in the Department of Sociology and Anthropology at the University of South Alabama in Mobile. Dr. Curry is a member of a number of professional associations, including the American Sociological Association, Southern Sociological Society, and the Midsouth Sociological Association. Among his research papers published include, "A Study on Viet Nam Amnesty: The Social Demography of a Political Issue," and, "The utilization of Dynamic Models for the Comparative Analysis of Military Institutions," all of which involved the use of a, a number of others which involved the use of statistical analyses applied to sociological questions. Dr. Curry is trained in computer programming, both FORTRAN and basic languages, and he has considerable experience with [252] a computer package, as it's called, the statistical package for the social sciences or SPSS, as it is known. He is presently in the process of publishing a book which will come out from the University of Notre Dame Press in the fall of this year on the subject of *Statistical Analysis of the Ford Clemency Board Data on Draft Offenders*. Your Honor, we seek to qualify Dr.

\*These excerpts inadvertently were omitted in printing. The other excerpts of Dr. Curry's testimony may be found in Volume I to this Joint Appendix at page 229.

Curry as an expert witness in the field of sociological and demographic applications of statistics.

THE COURT: Does anyone wish to inquire respecting his qualifications

MR. FLEMING: No, Your Honor.

THE COURT: Let him be recognized as an expert in those fields. From time to time I see people coming in the courtroom, gentlemen. I saw one gentleman come in with a sort of briefcase. All of you are charged with looking after your witnesses, those under the rule. I call that to your attention and then I'm going to leave it up to you from now on. It may be these people are not witnesses I've seen in the courtroom but I do want all of you to know, as I reminded you, each of you is charged with the duty of seeing that your witnesses comply with the rule.

MR BLACKSHER: Yes, sir, we're aware of that.

THE COURT: I leave it up to you. Thank you. [253]

MR BLACKSHER: May it please the Court, Dr. Curry's curriculum vita is plaintiffs' exhibit 2 already in evidence.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Curry, when did counsel for the plaintiffs first contact you in connection with this litigation? A. In October, sir.

Q. Of 1977? A. Yes, sir.

Q. Have you ever testified in litigation before as a witness? A. No sir.

Q. When you were retained by us what did, specifically, did we ask you to do as a consultant? A. You asked me to see if there was a relationship between the percent of black in precincts and the percent of votes.

THE COURT: Are you able to hear the doctor over at the table here?

MR CARR: Yes, Your Honor.

THE COURT: Perhaps if you could speak a little louder, sir. A. Yes, sir. Okay, sir.

THE COURT: Go ahead.

[254] A. You asked me to find out if there was a relationship between the percentage of black voters in precincts and the percentage of votes that certain candidates got in those precincts, and I was, a little later, about a month later I was asked to see if there was relation, to come up with statistics to compare the turnout, turnouts for blacks and whites in various elections.

Q. All right, sir. What raw data were you given to perform these analyses? A. I was given voter registration data from Escambia County and the City of Pensacola and I was given voter returns by precincts for Escambia County and the City of Pensacola for the elections from 1955 through 1977 and I was given census data on the City of Pensacola for 1970.

Q. What was the purpose of having the 1970 U.S. Census data? A. The census data was used to get a measure of income per precinct so that we could control for income in our statistics.

Q. Okay, and could you explain the mechanical problem of translating the income information that's in the census data into the boundaries for precincts that are used for voting? [255] A. Yes. What was done, we had median income for the census tract, and using a map we found out which precincts were inside that census tract. Then weighting the size of the precinct we were able to calculate an estimate of the median income for each precinct.

THE COURT: I suppose you're going to clear this up for me. Median income and income cuts across the board. It is not confined to race. I suppose you're going to show me how you tie it in, but go ahead.

Q. Why don't we discuss that now, Dr. Curry? Why were we interested in having information about income in connection with the analysis? A. Yes, sir, see, if we just looked at race and its relationship to the percentage of votes we wouldn't have an idea because, for instance, black people are usually poorer than white; we wouldn't have an idea whether it was income that was causing the vote to come out this way or whether it was the percent black, but if we put regression analysis, which the technique I used allows us to look at both of that, so we can take out the effect caused by income and look at the effect caused by percentage of black.

THE COURT: I don't quite understand how you're going to do that except that the median income of blacks generally is lower than whites, but we have both blacks and [256] whites who have small incomes, median incomes and very high income. The percentage of it or amount, I don't understand how you could arrive at a percentage figure on it. All you know generally is that it is recognized that blacks as a race have a lower median income than whites. A. Yes, sir.

THE COURT: But that's all you know.

A. And also for Pensacola then I have an estimate of what the median income for that precinct is and what the percent black is and what this kind of statistics does —

THE COURT: Median income for a precinct and also have the figures for registration of blacks and whites?

A. Yes, sir.

THE COURT: That's the way you try to tie it together?

A. We use it to control. If we have the information with regression analysis we can take out the factor due to income because, as you say, there are poor whites and poor blacks voting and we want to take out the effect and sometimes it will show up, in the statistics it will show up that income in some elections, those involving two whites, very often comes out or can come out as the most important factor.

[257] THE COURT: All right, sir.

MR. BLACKSHER: We're not trying to use income to tie it to race but rather to show that it's race we're looking at and not some other demographic feature of the returns.

THE COURT: Yes, sir. Go ahead, sir.

#### DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. All right, sir. Dr. Curry, were you asked by us to use a statistical analysis to investigate whether there existed patterns of racial polarized voting in the Escambia County — Pensacola electorate? A. Yes, sir. The term "polarization" didn't come up immediately but I learned that over the process, that this was the legal term. I was just asked to show an association initially.

Q. The relationship between? A. Yes, to show whether there was a relationship between the percent blacks and percent of votes a candidate receives in a particular precinct.

Q. Would you take the time, please, to explain to the Court and for the record the statistical model that you used to perform this analysis. A. Yes, sir. If it's okay with Judge Arnou I'll try to explain it to you. I have some drawings to help.

\* \* \* \* \*



[261] THE COURT: Take your 30 percent black precinct. That means that 30 percent of the votes in the precinct were black?

A. Thirty percent of the people voting were black, yes, sir.

THE COURT: When it comes around to determining how many of those votes, those black votes that voted were Jones votes or not, how do you get to that? Because when that ballot goes in the box nobody knows the color.

A. Yes, sir. What we're doing is we're really just seeing the relationship of precincts. This technique was used in the Coleman Report in 1966 for Congress and they found that by, that grouped data very often can give a better indication of what people are doing because people in groups have, if there's a social force at work, that social force operates irrespective of our individual characteristics. For instance you and I both have little idiosyncrasies that separate us from other whites but still if we assume there's some overall behavior that whites have that's operating for all the whites in the room, operating for all the blacks in the room, while an individual white person or individual black person is going to have those idiosyncratic factors, what we assume as sociologists is if we look at a whole group of them those social factors, those little [262] idiosyncratic factors are going to average away. I mean if you're away from the model or average white person in some ways I might be away from the average white person in another way, so the larger group we get the more we average out the little idiosyncratic effects and really get to measuring the effects of being white on how you vote.

## DIRECT EXAMINATION RESUMED

BY MR. BLACKSHER:

Q. Dr. Curry, I think — A. Yes, sir.

Q. Maybe you're not in my mind responding directly to the Court's question, and that is, what you've got in the percentage black is the percentage of blacks among registered voters; that doesn't measure, that's not saying that 90 percent of the votes were cast by blacks? A. Right, it doesn't.

Q. What's the authority, what's the rationale and validity of using the percent of registered blacks as a measure of how many black votes were cast in that precinct for a candidate? A. In a free election system we don't, we don't know, as you said, how an actual black or white person voted. But as I said, we look at the average effect inside a precinct. We've got something that we can really [263] measure. We know.

THE COURT: I'm sure you'll make it clear to me as we go along but that was the question I was concerned about and I still don't see how this approach so far does it. I can see how in an election where you have a primarily black precinct and you have so many votes you've got something concrete to go on in a particular race. I don't know.

Q. Dr. Curry, let me ask, well, excuse me. A. Yes, sir.

Q. Were you going to ask another question?

THE COURT: Go ahead, sir.

Q. Let me just ask this, since we don't have, and it's impossible to have the information of how many blacks voted for this candidate and how many whites voted for this candidate because we have a secret ballot on it. A. Yes, sir.

Q. Is it permissible and is it considered professionally acceptable in the field of applied sociology to use the next best data in averaging a large number of samples, that is, a large number of precincts? Is it professionally acceptable to use the next best information, which is the percent of blacks and whites registered? A. It most certainly is, sir, \* \* \* \* \*

[271] A. Yes, sir. I was told by you that Judge Pittman accepted a .50 "r" square as being significant and so I followed that even though that seems lawfully high to me because social scientists are used to representing any, you know, if race explains 30 percent of how a vote is going that would be significant to me as a sociologist, but I understand in a court of law that if it explains more, if race explains more than half of the relationship between —

THE COURT: What would you consider an acceptable "r" two factor to establish it? A. The way I look at it, we usually use "r" square to estimate how good our guess is going to be. If we have a small group for something, a sample, like if we only had four or five precincts for Pensacola and calculated an "r" square for those four or five and then guessed about the other hundred fourteen then "r" square would mean, would be meaningful to say how good can we get about those hundred fourteen, but right now we put all hundred fourteen in here to get the "r" squares we're working with here. So what this really is, is the measure of how much polarization, this is an exact measure of how much polarization there is across precincts so that you can just say how much is satisfactory, how much of a vote should be explained by a person's race, should be 30 percent, 10 percent.

THE COURT: Well, I was asking you what figure was acceptable to you, what you think you should use. This incidentally, this is just a hypothetical here?

A. This is still a hypothetical, sir. Yes, sir.

THE COURT: We're going to get to whatever you've done in this county? We haven't gotten that?

A. Yes, sir.

THE COURT: When we get to whatever, you say .50 "r" square to you is high. Isn't that what you said?

A. It's very high, yes, sir.

THE COURT: What do you mean by that?

A. That means as far as I'm concerned, sir, this is a personal, this becomes a personal opinion. Half of the percentage vote per precinct shouldn't be being explained by race. It seems that politicians should be speaking to all communities in the city to a degree that not that much percent will be.

THE COURT: I see. In other words if it was down at zero you'd say no polarization?

[273] A. As it approaches zero that would be fine.

THE COURT: And what spot above that would you say is an indication of polarization?

A. I'd say, I'll settle for the .50, sir, not knowing that much about the way the law should work.

THE COURT: The way the what?

A. The way the law should work, how much polarization is acceptable.

THE COURT: The question is whether the black vote is being diluted.

A. Yes, sir.

THE COURT: And whether there is evidence of blacks voting for blacks and whites voting for whites. That's not exactly a legal point, but the question is on your statistics where would you draw the line or put the line that indicates that in a particular race whites were voting for whites and blacks were voting for blacks?

A. I have drawn the line at fifty, sir.

THE COURT: You have?

A. Yes, sir.

THE COURT: Even though you think it's high you would stay with fifty?

A. Yes, sir, I will, because fifty works quite well in this case.

THE COURT: Go ahead, sir.

\* \* \* \* \*

[299] BY MR. BLACKSHER:

Q. Dr. Curry, may I interrupt a second. A. Yes, sir.

Q. On the point whether it's Democratic Party affiliation or race which is the predominant influence, could you explain how the stepwise regression tells you which factor is having more influence on the percent vote by looking at the outcome there? A. Yes, sir. Are you satisfied that there's polarization in every black race in the school board and -

THE COURT: Well, I'm satisfied that your figures show that.

A. Yes, sir.

MR. FLEMING: I thought the Court was asking the questions. A. I'm sorry. I was just trying to save time.

THE COURT: Is there anything else you want to ask him?

Q. Yes, sir, I just wanted him to point out what a step-wise regression means so that you can tell which of these factors, demographic factors, the computer tells us had the most influence on the outcome. A. Let's look on page 37 of the summary sheet, tab 43, in the book on school board races. Change that to tab 38. Okay, here's why we used income and female, which [300] we also have, and Republican, if it was a general election, we counted Republican, because we assumed the Republicans weren't voting in the Democratic races. Here's what happens. The computer in setting up this equation, it looks at this correlation matrix and says, "Well, what relates most to the percentage of votes a candidate is getting," like here's the percentage of votes Marshall is getting. As you can see, this is flip side in each case. One is just a negation of the other. Okay, for running this on Marshall the computer looks and says, "Which one of these independent variables here, income counted, and these three, which one of these has the largest correlation," is black, so it runs black in first and takes black out and then it runs, gives us the regression equation for just black and then it looks to see which is the next largest. In this case it's percent female. Then it looks to see which is next largest, in this case percent Republican, and then the last one goes in and there's a summary table which is easier to interpret than these pages. The summary table is right here and this summary table allows us to tell how much of the variation in vote for a candidate like Marshall, in this case, Carol Marshall, is determined by this. This is on page 6, under tab 38.

[301] Q. Got you. A. Okay, this says that 91 percent of the differences in votes for percent Marshall was determined by black; .03 percent is determined by the difference in Republicans.

THE COURT: When you say black, you mean determined by race? Is that what you mean?

A. Yes, sir, by race. Excuse me. I use black. It really should be race.

THE COURT: What you're saying is that 91 percent of the determination came from polarization of votes?

A. How many he got.

THE COURT: Marshall? That's what it amounts to?

A. Yes, sir.

THE COURT: That was a race with Dr. Spence?

A. Yes, sir.

THE COURT: I see what you're saying. You're saying the most, according to the computer the fact it was largely the reason for his, those factors to be considered, was race?

A. Yes, sir.

THE COURT: And there was polarized voting in that race?

A. And that's controlling for Republicans, which accounts for 4 percent.

[302] THE COURT: It's a nonpartisan election.

A. Yes, sir.

THE COURT: Your knew that?

A. Yes, sir. At the beginning I was running percent Republican.

MR. BLACKSHER: That was the Democratic Primary.

THE COURT: Just a minute. This is a school board election and the school board election is nonpartisan under Florida law, isn't it?

MR. RAY: No, Your Honor, partisan.

THE COURT: School board is?

MR. RAY: Yes, Your Honor.

THE COURT: I'm in error then. We have a primary in the school board election?

MR. RAY: Yes, Your Honor, in this county it's a partisan election. A. In any case this only explains 4 percent of the variation. It would only detract from female and income. Income, as you can see, explains practically nothing, and female explains practically nothing.

THE COURT: All right, sir. Anything else with him, Counselor?

Q. One last question, Dr. Curry. Is the regression analysis technique you've demonstrated here today a commonly used method of analyzing this kind of [303] political information? A. Yes, sir, it is the best technique to be used, that can be used for analyzing this kind of information.

MR. BLACKSHER: Your witness.

THE COURT: Cross examination?

MR. FLEMING: Thank you, Your Honor. I'm trying



best to figure out where to set up here. I have copies of all this stuff to tote.

### CROSS EXAMINATION

BY MR. FLEMING:

Q. Good morning, Dr. Curry. My name is John Fleming. We met at a deposition a while back. A. Yes, sir.

Q. And as you recall, at that time I asked you a number of confusing questions while I was attempting to gain a little knowledge about the regression analysis approach. I've done a little bit of reading since then and I hope maybe we'll have an opportunity to confirm whether or not I've learned anything. Now, you don't regard yourself as an expert in the theory of regression analysis, do you Dr. Curry? A. Expert, yes, sir, as far as, I'd say I understand the theory of regression analysis.

\* \* \* \* \*

[341] THE COURT: It really gets to polarized voting.

MR. BLACKSHER: Yes, sir.

THE COURT: In a district, and overall we encourage people to forget the fact of race in voting. You say we've got a situation where they aren't forgetting so now we go to a single-member district where it really gives some effect.

MR. BLACKSHER: I think that is a fair simplification.

THE COURT: It would be nice in this nation if all of us could decide to vote without regard to race, sex, color or creed like the Constitution of the Nation wants us to do. Maybe that day will come, but that's not the case now. Anything else you want?

MR. BLACKSHER: Yes, sir.

THE COURT: Go ahead.

### REDIRECT EXAMINATION

BY MR. BLACKSHER:

Q. Dr. Curry, I guess we have established there's a difference between the phenomenon of racial polarization and phenomenon of whether you win or lose. A. Yes, sir.

Q. Okay, so if we were just looking at Dr. Spence's [342] returns in the city election, he won? A. Yes, sir.

Q. Do you still have that in front of you? A. No, sir, I don't right now. I'll look it up. You mean the scattergram?

Q. The scattergram. It looks like between tab eleven and tab twelve, page sixty-eight. A. Okay, got it, sir.

Q. Okay, this scattergram, as I understand it from your prior testimony, shows the polarization because in the precincts that were, for example, 90 percent black, Spence got close to 90 percent of the vote. A. Yes, sir.

Q. But in the white precincts —

THE COURT: Counsel, let me. Maybe I've gone too fast. Did anybody else want to cross examine him before we went along? I'm sorry. I didn't mean to bypass anybody.

MR. RAY: No, Your Honor.

MR. CARR: No, Your Honor.

THE COURT: Thank you. Go ahead.

Q. Whereas Dr. Spence was getting 90 percent of the vote in the 90 percent black precinct he was getting what was the, is there a rough average you can see of what he

was getting in the all-white precinct there? Can you [343] tell from this or from one of the statistics?

MR. FLEMING: If I might assist, I think the "Y" intercept is indicated immediately following the scattergram to be 44.8.

A. Yes. I wouldn't necessarily consider the "Y" intercept the average, average of those.

Q. Of the all-white precincts? A. Of the all-white precincts because the 'a' intercepts is allocated as the average, the average votes for Spence per precinct, minus the regression coefficient of slope times the average vote for the average percent black in the precinct, which is a statistical —

Q. The point for those of us who don't want to take a math course, it is that you can't look at the "Y" intercept and say that's the average the all-white or 100 percent white precincts gave the black? A. Sometimes it might be and sometimes it might not be.

Q. And we would have to have you around to tell us which times? A. No, sir, you just have to have a calculator.

Q. No, sir, I would have to have you around. A. Okay.

Q. But the point I'm making here is that somewhere around 50 percent, plus or minus 5 percent, is what [344] the all-white precincts were giving Dr. Spence in this race, right? A. Yes, sir.

Q. Okay, and that is significantly different from the percentage he was getting in the black races and that determines the polarization? A. Certainly, sir.

Q. Okay, but it doesn't determine whether he won or lost. In this case he won, is that right? A. In this case?

Q. Dr. Spence. A. He did win, yes, sir.

Q. Okay, and does this display of how many white precincts Dr. Spence won give some indication of how many white precincts, let's say over here on the left hand margin, that a black candidate must get in order to add to his black totals and achieve an overall majority and get elected? Is this a fair way to judge this? A. That's a way of estimating, yes, sir.

Q. Okay, and isn't it a fact that only in the two examples that we've seen where Hollice Williams won twice, I believe it was, in opposed contests and Dr. Spence this once, those are the only times?

MR. FLEMING: I object, Your honor.

\* \* \* \* \*

## EXCERPTS OF TRIAL TESTIMONY\*

OF DR. MANNING J. DAUER

[21] Q. Thank you, Your Honor. Dr. Dauer, that's all the questions I have. Lawyers for the plaintiffs may like to cross examine.

THE COURT: Let's see if we have some, before you take over, sir, anybody else want to?

MR. LOTT: No, Your Honor.

THE COURT: I thought I saw Mr. Ray get on his feet. You may proceed with cross examination.

MR. STILL: Thank you, Your Honor.

## CROSS EXAMINATION

BY MR. STILL:

Q. Dr. Dauer, we met in the hall. My name's Edward Still. I'm one of the attorneys for the plaintiffs. Since February, when you were retained by the defendants, how many trips have you made here to Pensacola? A. One.

Q. All right, sir. Now, since your deposition was taken on the 8th of May have you made any further analysis of Pensacola and Escambia County which would further support or detract from the conclusions you made in that deposition? A. No.

Q. Has anyone discussed with you the testimony that [22] has been elicited in this litigation so far regarding responsiveness, polarization, dilution and campaign tactics? A. I have had two consultations with counsel and there has been, but there has been no detailed presentation of evidence presented in the case. I have not sought to master the situation in Escambia County.

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\*These excerpts inadvertently were omitted in printing. The other excerpts of Dr. Dauer's testimony may be found in Volume II to this Joint Appendix at page 578.

Q. All right, sir. Now, I believe during your deposition it was your opinion on the basis of the information you had at that time that you did not have an opinion as to polarization in the county but that you had found a polarized vote in the School Board and you had not found polarized voting in the city. Is that correct, sir?

MR. CARR: Your Honor, I have an objection to make. First of all this is not within the scope of direct examination and secondly Dr. Dauer said on direct examination he had no opinion.

THE COURT: I disagree with you. It's within the proper scope of cross examination because there's some background. I didn't understand the question. Will you ask it again.

Q. Yes, sir. Let me break it down into three parts. With regard to the County Commission, on your deposition you did not express an opinion as to whether there was polarized voting for that body, is that correct, Doctor?

THE COURT: Was he asked? Was he asked? Are you [23] trying to say, are you going by something in this deposition? Was he asked did he have an opinion in the deposition?

MR. STILL: Yes sir.

THE COURT: Doctor — he's not said anything to the contrary here that I know, but go ahead, Doctor. Do you know what he's talking about?

A. Yes, Your Honor. I examined certain voting results in regard to elections since 1971 for the School Board, the County Commission and the City.

THE COURT: Yes, sir. All right, sir.

A. In regard to the specific black-white opposed elections. This was, as I've stated, one factor in regard to dilution. And it showed that the elections where there were

black-white candidates did have polarization in the county except in two elections, which were in 1974. But, and there I was using a measure that if the candidate, if the black candidate got 40 percent in the white precincts the result was that it was not. So out of, oh, ten or eleven elections I found polarization in the voting proper between black-white candidates, if it were eleven I found polarization in nine and not in two. On the other hand I also looked at the race of Justice Hatchett, who ran in the county at large, and he carried the county at large and he carried a majority of the white precincts. So that was the case of a black-white opposed candidate in the same precincts [24] but a different election. Certainly it had nothing to do —

THE COURT: There again, just looking at that alone is some evidence but is meaningless, standing by itself, that is; it doesn't establish anything. There may have been other factors in that race, other situations here and that kind of thing that accounted for it.

A. Well —

THE COURT: You can't just say that that was lack of polarization in that vote on that race. I mean it works both ways, doesn't it?

A. On the other hand if there had been polarization and white supremacy was the principal issue and he was opposed by a white candidate he would not have carried the county. So I think I —

THE COURT: If that had appealed to the white voters. In other words if the white voters had been polarized against him he wouldn't have carried the county, is what you're saying.

A. Exactly.

THE COURT: So you're saying this is not a polarized vote?

A. That's correct. And so I'm indicating that there must have been even in the vote a lack of white polarization in that particular race.

THE COURT: Well, I was thinking of some other factors. [25] His candidate, as I recall, was from way down south, from Miami, and he was way up here, and different things got into it. He had strong support from the Bar Association and other things. I'm saying all these things. I don't suppose there's objection from any body to my saying them. I do know those things were true about Mr. Justice Hatchett.

A. Yes, but I'm saying even if he were from Miami and even if the Bar Association did endorse him —

THE COURT: It still means the white votes didn't vote for him.

A. The whites did vote for him.

THE COURT: I mean voted for him; I understand.

A. But I'm also saying that this is only one factor of the total political process, so while this shows some evidence of vote polarization in my judgment that doesn't outweigh on the issue of vote dilution the total question of the delivery of services and so on. And that those are other factors in order to determine vote dilution.

THE COURT: I think I understand that and I believe, you all can tell me, we have no quarrel, I believe, on some expert testimony; his point there as I understand it is that even if you establish polarization that necessarily doesn't indicate dilution. You have to put other factors.

A. That is correct.



THE COURT: I believe that's consistent with all the [26] testimony I've heard, is it not?

MR. STILL: Yes, sir, I believe so.

THE COURT: Go ahead, sir.

Q. Doctor, so on the basis of the evidence you looked at regarding polarization, which was just the election returns, leaving out for the moment dilution questions and responsiveness questions, you did find that there had been some polarization of School Board races, is that correct?

A. Yes.

Q. All right, sir. Now —

THE CARR: Your Honor, if I may, he asked the question in such a way as to indicate that the answer to the question could be drawn solely from an examination of the voting returns. The witness has testified it can't be done.?

A. Well, no, I answered in the context that the vote itself was polarized. I didn't say what the result, I would say again that in regard to the School Board the total test is whether services are delivered and whether there are compensatory and vocational education and campaigning in the black community.

THE COURT: You have to get into that on the issue of dilution?

A. Yes.

THE COURT: Go ahead, Mr. Still.

Q. All right, now, Doctor, now you advised the [27] local governments what to look for on these issues of dilution and I presume that's some of the evidence they put on here. Now let's take one aspect of dilution that you men-

tioned, which was, or, excuse me, one aspect of responsiveness, which is appointments to boards and committees. Now, if there were no blacks appointed to boards and committees and yet it was shown that there were some blacks who were qualified to be appointed to boards and committees would you say that that indicates at least in that aspect unresponsiveness by the local government?

A. I would have to look at the question of what qualifications were needed on those particular boards and commissions and also how actively individuals may have made their qualifications known before I could really answer that. And I don't think I can answer that one by itself without knowing the duties of the boards and the qualifications of the candidates.

Q. All right, now, Doctor, you mentioned your study of the Dade County legislative delegation. That study, I believe, was made in 1966. At least it was published in 1966. A. Yes.

Q. That was a completely multimember district in Dade County? A. That is correct.

[28] Q. Now, is it your testimony that because the Dade County legislative delegation was responsive to the needs of blacks in Dade County that that means that all at-large elected groups are responsive to the needs of blacks? A. The Dade County is merely one example. And I would say that you would have to then study, but there have been other studies than mine. For instance there's an article by Profesor Banzhaf in the *Yale Law Review* that points to the same thing. That comes immediately to mind. And he argues in fact that multimember districts are unfair to the, are unfair because it gives a larger impact to minorities.

Q. All right, now, sir. Professor Banzhaf's articles deal with electoral strength and not responsiveness, don't they? They don't make quantitative analysis of the responsiveness of elected representatives? A. I beg your pardon. He argues on that point, he hasn't studied the specific item but he has set up a mathematical model of what the, of whether if you vote for five people you have more impact on the ultimate result in the deliberative body by having voted for five than if you just vote for one.

Q. All right, Professor Banzhaf's is a mathematical model and not based on comparisons?

[29] A. He did not examine specific legislative or commission behavior but he set up a mathematical model.

Q. I believe you stated in your article that the Dade County delegation, you differentiated them from the rest of the Florida Legislature in that they were much more liberal than the rest of the Florida Legislature. Isn't that correct? A. Yes.

Q. And the rest of the Florida Legislature, many of them, were also elected from multimember districts at the time, weren't they? A. I broke this down into segments and I scaled that so that if they came from certain areas I think I adjusted it for that.

THE COURT: Counselor, I hate to interrupt this but I need to take a recess. I've got an important telephone call on another matter. While we're at it, if we can take about a ten minute recess and I'll be right back with you.

(Recess)

CROSS EXAMINATION RESUMED

BY MR. STILL:

Q. Now, Doctor, we were talking about the Dade

County delegation and we were saying that they were a little bit more liberal than the Florida Legislature at-large. Wouldn't it be fair to say that a liberal delegation is [30] usually more solicitous of the needs of a black constituency than a conservative delegation would be? A. Yes.

Q. All right, sir. Now, also in that study of the Dade County delegation I believe that you stated that the Miami Herald, which was the chief daily newspaper there in Dade County, was able to influence from 20 to 40 thousand voters or even more, partly because of the long ballot and the elections at-large. Does that mean that decisions in a large multimember district are probably more likely to be made on the basis of some recommendation like by a newspaper or some other influential group than on the basis of some close personal observation by the voter? A. In that particular case where they had as many as sixteen I stated in that article that I thought that was too large and I recommended at the end of that article that they change over to dividing Dade in quadrants and having no more than five or six in each quadrant so that there could be better voter recognition of the individuals, and that recommendation of mine was repeated to the Florida Legislature in 1971 and was followed out. In other words what I thought was that there should be a balance between having sixteen on the one hand or having single-member districts on the other and therefore I consider that when you get it down to five or six, why, you have about, you are [31] Still within the attention span of the voter but that that also avoids the ward politics aspect of single-member districts.

Q. Would you say that a multimember district of ten members would be too large? A. Yes.

MR CARR: Your Honor, can I ask for clarification of

the question. Is he talking about Dade County or is he talking about in general?

Q. I'm talking about in general. He's testifying in general. Is that a general statement, that the attention span of voters is about the same no matter where you go? A. It is if they all run at the same time. Now, if you stagger the elections that could have a different, in other words it depends on whether you're offering the voter with ten opposed choices in a single election or whether the terms are staggered.

Q. Are you aware that the Pensacola City Council has ten at-large members? A. No.

Q. All right, sir. Now, one of the purposes, as I understand it from your testimony and from other writings, of at-large elections, is to try to produce a body which is more like the whole electorate rather than like the parts of the electorate. Isn't that correct? [32] A. Not quite. I'm suggesting that the parts ought to have their input and then the individuals who are being voted on ought to have the point of view of a variety. But I'm not suggesting that you're just going to have everybody elected, excuse me, everybody represented if you do get this at-large.

Q. All right, not everyone will be represented if you have at-large? Is that what you're saying? A. That is correct.

Q. So really the effect of at-large elections is sometimes to exclude some minority groups from direct representation, is that correct? A. It depends on how you're defining direct representation. I'm defining direct representation as having an influence. If you mean by direct representation that each person in a minority has to have somebody identified with that minority, that would be a different answer.

Q. Now, not necessarily a member of that minority. Let's say someone chosen by that minority as opposed to someone chosen by that minority and the whole majority. A. If the minority is fairly sizable I think the result would be unlikely because if the minority constitutes as much as 10 percent or more of the vote then the chance of that minority being completely excluded would be unusual.

Q. Doctor, let's take an extreme hypothetical here. [33] If we could somehow or another work out through some process the problems of campaign costs and ballot size and voter recognition, would you favor electing the entire Florida Legislature at-large from the entire state?

A. No.

Q. Now, why not? A. Because I've already said I think the attention span of the voters can extend to as many as half a dozen in a particular election.

Q. Well, let's say we could work that problem out. I mean by having staggered elections and it was all carried out through some 100 percent television coverage system and the State paid for the campaign.

THE COURT: You're talking about something you could work out in a state the size of Florida?

MR. STILL: I'm just using that as a hypothetical.

THE COURT: The problem is whether it's realistic or impossible. I don't know where you getting with it. If you want to go ahead, go ahead with the question, I guess, sir.

Q. Well, are there any other reasons besides this problem of the attention span that would militate against having at-large elections for the whole State of Florida?

THE COURT: Are you speaking of an election where every member of the House of Representatives and Senate is elected by the whole State of Florida? Is that what you're [34] saying?

MR. STILL: Yes, sir, that's what I'm saying.

THE COURT: In other words just like you elect the Governor or Senators? You confine it to two or three hundred Representatives, so forth?

MR. STILL: Yes, sir.

A. I'm tempted to answer it this way. This happened once in Illinois when they were unable to pass an apportionment bill and it was a mess.

Q. But if we could get over that ballot size and that attention span problem are there any other reasons why we shouldn't have state-wide at-large elections? A. I don't see how you can. I don't see how you can do that on legislative questions which are as complex as would affect the entire state.

Q. All right, so there are some regional or localized differences which might require local representation, is that correct? A. That is correct.

Q. All right, sir. I believe you stated in your deposition that Malcolm Jewel had written an article which supported your position favoring at-large elections. Were you talking about the article in the *George Washington Law Review* of 1968? A. Right. I did not say that he necessarily [35] supported my position. I said that he discussed the pros and cons on this question and I was referring to that particular article and he did not support my position. He simply stated what the issues were on both sides of the question.



Q. Well, in fact he pointed out that ethnic minorities and particularly blacks had more of a chance of being elected in single-member districts, didn't he? A. As far as a specific black being elected, his answer is yes.

THE COURT: Yours would be too, wouldn't it, Doctor?

A. Yes.

Q. Now, Doctor, let's talk for a moment about responsiveness again. It's my understanding that you're saying that responsiveness is one indication of whether or not there is dilution of the black vote in a particular election, elective body. Is that correct? A. Yes.

Q. Would responsiveness also be an indication whether there was a dilution, let's say, of rural votes or of urban votes in, say, a state legislature? A. Yes.

Q. Let me read you a statement, Doctor, which is taken from an article by Herbert Jacob and Michael Lipski, L-I-P-S-K-I, called "Outputs, Structure and Power," and it's [36] found in the book *State and Urban Politics* edited by Hofferbert and Sharkansky. Are you familiar with that book and with that article? A. I'm familiar with some chapters but I don't remember this particular part of it.

Q. All right, let me read you this statement: "Three independent investigations using slightly different analyzing techniques have concluded that legislative malapportionment has not been related to a distinctive pattern of outputs. Policies which might be heavily favored by the underrepresented urban majority are no more in evidence in well-apportioned than in poorly-apportioned states. The substantial differences in the level of outputs are accounted for by a variety of other variables, not by



legislative malapportionment." Now, would you agree with that statement, Doctor? A. No. As a matter of fact I've written in opposition to that point of view because what they did was that they measured certain items which were statistically measurable and they arrived at it in my judgment on the basis of partial evidence. They did not, they did not, they took more into account the level, for example, of highway expenditures and they took into account the level of school expenditures and they found that those were principally accounted for by what is called incrementalism; that is, [37] it was part of a state budget for roads; next year they appropriate about the same percent and next year the same percent and so forth. But where I think they slipped up was that they didn't ask where the roads were being built or what aspects of the school programs and school services were being delivered. And there is a great deal of controversy in the literature on that point, that they did not go far enough when they stated their conclusions.

Q. In other words it's not how big the pie is but who gets the pieces of the pie, is what you're saying? A. Well, the size of the pie is one aspect but also there can be a differential division of the pie, yes.

Q. And so in terms of responsiveness if we were looking, let's say, at parks, and we found that parks were being built and maintained in white areas and not, in proportionately much larger numbers of acres than black areas, that would be one indicia of unresponsiveness? Is that what you're saying? A. If you can't get to them — I would have to know where the parks are located and how close they are, of course, in order to fully answer that question.

Q. But I'm saying if there were statistical evidence on

that point and it indicated that, that would be one indicia? A. It would, but I would weight it against who got [38] to the specific parks or swimming pools also.

Q. All right, sir. A. And how close they were.

Q. Now, with respect to what you call white polarization or what Mr. Carr called white polarization, I believe you said that one of the things you must look at is whether the white vote, whether the whites vote as a bloc behind candidates who are opposed to a minority. A. Yes.

Q. Now, Doctor, can you also look at campaigns in which a candidate was not necessarily opposed to a minority, he didn't have to be a J.B. Stoner of the States Rights Party in Georgia, but instead was just not relevant to the needs of the black community? A. If that were the case in the particular candidate's program and the way he voted, that would be significant.

Q. Now, in your chapter in *Changing Politics of the South* edited by Havard, I believe you stated that one of the reasons for the gap in registration by blacks was that you said it was the product of such cultural factors as limited relevance to the Negro of campaign issues? A. Yes.

Q. Now, would you still hold by that, that if we found a lower turnout or lower registration rate in a [39] particular community it might be indicative of a lesser degree of relevance of campaign issues to blacks than to whites? A. It could be an indicator.

Q. Now, Doctor, if I told you that the evidence in this case showed that in the very same election, the very time you walked into the polling place, that blacks were casting twice as many votes in races that involved a black candidate than they were in races which involved white can-

didates, would that indicate to you that there was a degree of lack of relevance of the campaign issues among those white candidates running against each other as opposed to a black candidate running against a white candidate?

A. It might or might not. Let me mention this. When a particular — here let me go on an example from something else. In the case of the Irish, when the Irish were first enfranchised, they first showed greatest interest in Irish candidates. After a time they showed greater interest in issues. So correspondingly on what you're stating I would say that at this point, and I've already indicated what I looked at are the black returns, the black returns show a blocking around their particular candidate and a high interest level. Now, in the case of how they turn out, how many votes they cast between the white candidates, then I would say it would depend on the platforms of those white [40] candidates and whether those white candidates were relevant. That would be another factor I would want information on.

Q. But you have not made such analysis yourself?

A. No, I haven't done that.

Q. Okay, Doctor. Now, also in your chapter in *Changing Politics* you said that, on page 160, "When the Negro vote helps to nominate a liberal, however, that candidate is likely to lose the general election. In Florida as in most states outside the South the concentration of the Negro vote in certain localities rather than its mere presence is the most important factor in its effect on politics." Would you say that that statement is still true? A. All right, it depends on the, I would say it is less true today than it was when I wrote that. The book was published in '72 and I wrote that in '71. And also it has to be measured against the degree of liberalness of the candidate. So that if, so that on a scale, how liberal a can-

didate is, then if the candidate is very liberal he moves a considerable proportion of the moderate vote. So it has to be measured in terms of time and also the degree of liberalness of the candidate.

Q. And generally, just so we can make sure we're defining terms correctly here, liberals we would say generally favor more social welfare programs and more redistribution of the income programs which would help the [41] poor more, is that correct, Doctor? A. By and large this part is, although I think there's growing awareness among moderates that it does redound to the benefit of the community if there are fewer unemployed and therefore you have to have, spend enough for vocational training and you have to have some job training programs of apprenticeship type and that a certain amount of expenditures are in the better interest of the entire community. That would be a point of view not just of liberals but also of moderates.

Q. Now, Doctor, you made the statement in your direct testimony that, let me see if I've got this correct. You were talking about the incumbency factor as it applied to black candidates and you said if there was polarized voting that the incumbency factor would be far outweighed by the polarized voting, that the racism of the whites, if it was in existence, would outweigh the incumbency and the blacks would have been defeated. A. Yes.

Q. Is that a fair statement of what you said? A. Yes.

Q. Now, Doctor, what support do you have for that statement? Is it just a general proposition that racism is stronger than incumbency always? A. No. I'm saying

what is evidence of polarization. [42] I'm saying that there are many, many situations where there is not polarization that is so extreme but it measures the intensity of the polarization.

Q. Well, Doctor, are you equating winning an election with there not being polarization and losing an election with there being polarization? A. As far as looking at a particular race between candidates I am talking about not just winning or losing but coming within 40 percent. Our definition in political science is that if two candidates are within the sixty-four range then it is not severely polarized. If it gets to sixty-five, thirty-five, there is a considerable amount of polarization.

Q. So you're saying that if a black candidate gets at least 40 percent of the vote then there's no polarization? A. I would rather put this on a scale. I would say that there's some but it's not so, but it is not severe.

THE COURT: It would depend a little bit too about the percentage of black and white votes in a particular place?

A. Right.

THE COURT: That would have to be a factor, wouldn't it?

A. Right.

Q. Well, that was my next question. I mean 40 percent of what? Forty percent of the total vote or 40 percent [43] of the white vote or what?

A. I was talking about whether or not the white, I was assuming a white precinct and I'm saying if the black candidate can get 40 percent.

THE COURT: Oh, I didn't understand that from the testimony.

A. Yes.

Q. Doctor, do you know of any other political scientists that have used this 40 percent test as an indicia of polarized voting? A. Yes. I certainly did not develop it. It is in many of the books on legislative politics. This is used. In fact Jewell is coauthor of one of those books with Patterson on legislative politics and they use it, for example, not in there in terms of black-white but in terms of what they call polarized Congressional districts, and there are a number of articles on opposed Congressional elections and in some where you even classify states as to whether or not the state politics is polarized so much that the candidate doesn't have a chance as between Democrats and Republicans.

Q. So that's really a predictive test to say, for instance, whether or not a Republican has a chance of winning in a Democratic state; we want to know how Democratic a state is? Is that what you're saying? [44] A. That's right. And, well, it's not just predictive. It's also analytical of what goes on.

Q. All right, sir. Now, do you know of any study which has used it in black-white situations? A. No, but I've seen it used in other minority situations.

Q. What other minority situations? A. For example some of the tests of attitudes toward Irish and the like. There are some historians, there are historical examples of that.

Q. All right, Doctor, let's go back to the Republican-Democratic situation for a minute in the book by Jewel. Does Jewel analyze those races only from the stand-point

of how well a Republican candidate did in a heavily Democratic ward or does he look at how the Republican candidate did in the whole state or the whole district or whatever the Republican happened to be running in?

A. It doesn't make, well, it depends on what the unit of analysis is. You could use it in any of those. But specifically he's using it in regard to Congressional districts.

Q. Well, now, if you could use it in any of those and you have utilized it only in predominantly white precincts then all you're able to tell us whether those predominantly white precincts are polarized and not whether the [45] whole electorate is polarized, is that correct? A. No. I used it in all of the precincts and I found that in certain of the races, just looking at black-white candidates, for example, that the black precincts were polarized and in the city precincts, for example, with some black-white candidates it was and others it wasn't. In the Hatchett race I found that it was, that it was not. In the case of the County Commission and the School Board races I found two where the 40 percent did not show polarization and some eight or nine where it did.

Q. Now, Doctor, in your analysis you only looked, did you not, at the wards which were 95 percent or above white or 5 percent, or excuse me, 95 percent or above black? A. No, no, I didn't. We broke them down by percent into five categories and we took a percent that were heavily black, 50 percent, up to that figure, then down to 30 percent, then 30 to 5 and then under 5.

Q. And your analysis then is, of polarization, is based upon the analysis of all five of those groups and not just the two groups at the extremes? A. That's right.

Q. That's not what you told us in your deposition, is



it, Doctor? A. I think that in the deposition I stated that we had scaled them and that, whether I described the scaling [46] in as much detail as I have now I do not remember at this point, but that's what we did.

Q. Excuse me just a moment. Doctor, can we use regression analysis to tell whether or not an electorate is polarized? A. The answer is that in a stepwise regression you're getting an "r" square and the "r" square is going to show which is the first factor.

THE COURT: Is going to show what, sir?

A. Which factor explains more of the division than any other. And that goes back to what I said on direct, that if, that on stepwise regression I think it skews it if part of the electorate, in this case the black part, is polarized and the white is not; it still would show that black-white is the number one factor in that particular vote that you're studying but I would argue that that showed that the black vote was polarized but the white, but it is not conclusive as to the white vote. That's why I've used this 40 percent rule, which is called the difference of means test.

Q. All right, Doctor, let me ask you this. On the elections that you studied, which were only contested elections in which blacks ran, is that correct? A. Yes.

Q. Did you look at any of the regression analyses [47] or scattergrams that have been prepared by the plaintiffs? A. Yes.

Q. Did you find any skewing among black precincts or white precincts? A. I found skewing among the blacks, black precincts, and I did not find polarization among the whites in those specific races that I've already indicated, which were two in the county at-large. I didn't find it in the



Hatchett race and I didn't find it in many of the, in five out of, I think, nine of the city races.

THE COURT: What does skewing mean, Doctor?

A. Skewing means that if the black vote is polarized and the white is not you can't generalize about the total electorate; you can only generalize about part of it. And skewing means that you're coming to a false conclusion.

THE COURT: Because you don't know about the white?

A. Because you don't know about the white.

THE COURT: And you said what about it in these things? Did you say you found no skewing?

A. I found that all of them were skewed because of the heavy vote in the black precincts and that that's a fault in regression analysis.

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